

ALCOHOL AND DRUG ABUSE ON RAILROADS

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

ALCOHOL AND DRUG ABUSE ON RAILROADS

JUNE 6, 1984

Serial No. 98-88

Printed for the use of the
Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1984

36-405 O

3261-54.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

BOB PACKWOOD, Oregon, *Chairman*

BARRY GOLDWATER, Arizona
JOHN C. DANFORTH, Missouri
NANCY LANDON KASSEBAUM, Kansas
LARRY PRESSLER, South Dakota
SLADE GORTON, Washington
TED STEVENS, Alaska
BOB KASTEN, Wisconsin
PAUL S. TRIBLE, Jr., Virginia

ERNEST F. HOLLINGS, South Carolina
RUSSELL B. LONG, Louisiana
DANIEL K. INOUE, Hawaii
WENDELL H. FORD, Kentucky
DONALD W. RIEGLE, Jr., Michigan
J. JAMES EXON, Nebraska
HOWELL HEFLIN, Alabama
FRANK R. LAUTENBERG, New Jersey

GERALD J. KOVACH, *Chief Counsel*

RALPH B. EVERETT, *Minority Chief Counsel*

SUBCOMMITTEE ON SURFACE TRANSPORTATION

JOHN C. DANFORTH, Missouri, *Chairman*

LARRY PRESSLER, South Dakota
NANCY LANDON KASSEBAUM, Kansas
BOB KASTEN, Wisconsin

RUSSELL B. LONG, Louisiana
DONALD W. RIEGLE, Jr., Michigan
J. JAMES EXON, Nebraska

(II)

CONTENTS

Opening statement by Senator Danforth	Page 1
Opening statement by Senator Hollings	2

LIST OF WITNESSES

Dempsey, William H., president, Association of American Railroads; accompanied by A. W. Johnston, vice president, operations and management; Joseph R. Neikirk, vice president, personnel and labor relations, Norfolk Southern Corp.; and Darrell D. Sorenson, director, employee assistant program, Union Pacific Railroad	28
Prepared statement	30
Dole, Hon. Elizabeth H., Secretary, Department of Transportation, accompanied by Hon. John H. Riley, Administrator, Federal Railroad Administration	2
Prepared statement	14
Goldman, Patricia A., Member, National Transportation Safety Board	20
Prepared statement	25
Hardin, Fred A., president, United Transportation Union and John T. Woischke, legislative liaison, Brotherhood of Locomotive Engineers	40
Prepared statement	43
Molloy, J. Paul, attorney	50
Prepared statement	54

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

American Trucking Association, Inc., statement	68
Briers, Kenneth A., locomotive engineer, Conrail, statement	63
Hall, Harold H., letter of April 4, 1984	35
Phillips, Don, article	64
Popeo, Daniel J., and George C. Smith, Washington Legal Foundation, letter of June 19, 1984	66
Stress Problems, article	65
Sytsma, John F., president, Brotherhood of Locomotive Engineers, letter of June 14, 1984	59

ALCOHOL AND DRUG ABUSE ON RAILROADS

WEDNESDAY, JUNE 6, 1984

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m. in room 253, Russell Senate Office Building, Hon. John C. Danforth (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Pamela Garvie, professional staff member, and Linda Morgan, minority staff counsel.

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. The purpose of today's hearing is to examine the seriousness of the alcohol and drug abuse problem on railroads and to review Government measures to combat the problem.

Today alcohol and drug abuse in the railroad industry is a serious problem. A study by the Department of Transportation completed in 1979 found that 23 percent of railroad operating employees were problem drinkers, that 5 percent of all employees reported to work very drunk or got very drunk while on duty at least once during the study year, and that 13 percent of all employees reported to work a little drunk one or more times during the year.

Certainly, alcohol and drug abuse is not unique to the railroad industry. Indeed, quite to the contrary, it is a tragic fact that alcohol and drug abuse are pervasive throughout our society.

However, intoxicated engineers pose a particularly grievous threat to human life. In the last 2 years, the National Transportation Safety Board has investigated nine accidents in which either alcohol or drugs were involved. These accidents resulted in 14 fatalities and more than \$26 million in property damage.

Consider, for example, an accident which occurred in the fall of 1982 in Livingston, LA. An Illinois Central Gulf train derailed. This train had 43 cars, 14 of which contained hazardous materials. The resulting fires, explosions and spills forced the evacuation of 3,000 people, many for as long as 2 weeks. Property damage was estimated at \$14 million.

At the time of the accident a railroad clerk was operating the train. The engineer was drunk. He had a long history of drinking and railroad accidents.

Just a year later, in September 1983 a Seaboard train ran into another train near Sullivan, IN. Two employees were killed. The

engineer and his brakeman had been drinking and they had fallen asleep.

These are just two vignettes, but they underscore the seriousness of the problem. Today the committee will receive testimony from the Secretary of Transportation, whom I know to be personally committed to addressing this problem, from the National Transportation Safety Board, and from representatives of railroad labor and the railroad industry. The committee looks forward to receiving the testimony of these witnesses.

Furthermore, I want to invite other interested parties to submit statements for the hearing record. The record will be open for 2 weeks to receive such statements. Hopefully, today's hearings will provide a forum for better understanding of the problem of alcohol and drug abuse in the railroad industry and lead to effective remedies.

Senator Hollings has an opening statement for the record.
[The statement follows:]

OPENING STATEMENT BY SENATOR HOLLINGS

Today the Surface Transportation Subcommittee is holding a hearing on drug and alcohol abuse among rail employees. This safety issue has received much attention in the last several years, and today's testimony will demonstrate the concerted efforts of all parties to respond to this continuing concern.

I think we all would agree that the problem of drug and alcohol abuse among rail employees is very real, and that we need to develop better ways of understanding the nature of the problem, and of controlling it. However, we continue to search for the best resolution to the problem, and the hearings today will provide a timely forum for a discussion of various options.

Today the Committee will hear testimony on public and private sector solutions to this problem, specifically focusing on whether Federal regulations are necessary. In reviewing various alternative ways of addressing the problem, it seems to me that we need to ask the following questions:

To what extent do we really understand the nature and extent of drug and alcohol abuse in the rail industry, and how can we better improve detection of the problem?

Is there sufficient deterrence of drug and alcohol abuse, and are additional requirements, perhaps through Federal regulations, necessary to ensure improved deterrence and better control?

What types of programs are available to discover and rehabilitate abusers in the rail industry, and are these programs adequate?

In response to these questions, the Department of Transportation has decided to propose certain regulations, and we will hear various concerns raised today about those proposals. The Committee will also hear from representatives of the carriers and rail labor, who will testify to their private-sector detection, enforcement and rehabilitation programs. I commend the significant efforts and commitment of certain rail management and labor in the cooperative programs of the type described today, and I hope that those efforts can serve as a catalyst for the entire industry.

I look forward to the comments to be made today and to a continuing dialogue on this issue, which is so important to the safety of the public, and certainly of the rail employees themselves.

Senator DANFORTH. Madam Secretary, we are honored to have you with us. And John Riley, thank you for being with us.

STATEMENT OF HON. ELIZABETH H. DOLE, SECRETARY, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY HON. JOHN H. RILEY, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION

Secretary DOLE. Thank you, Mr. Chairman.

I very much appreciate the opportunity to appear before you this morning. This subcommittee is undertaking important hearings on the role of alcohol and other drugs in surface transportation at a time when the Department of Transportation is making some of its most significant decisions concerning this persistent problem.

As Secretary of Transportation, safety is my highest priority, and I am heartened by the growing recognition around the country that alcohol and drug abuse is a serious threat to transportation safety that cannot and should not be ignored.

Mr. Chairman, I recognize that you and your subcommittee have long played a key role in surface transportation safety. I welcome your interest in the alcohol and drug issue and I look forward to working with you and with the rail industry and its employees and the general public to sustain and translate the current momentum into meaningful action on this issue.

The subject of today's hearing is the impact of alcohol and other drug abuse on the railroads, and your timing, I must say, is propitious. We have a problem in the railroad industry, alcohol and drug abuse. It is taking the lives of fellow workers and it is costing the industry millions of dollars every year.

We can wait no longer to take action. We must protect our workers and the public and the industry itself. As you know, the Federal Railroad Administration has been hard at work under John Riley's able leadership on a rulemaking proceeding for the past year.

Between 1975 and 1983, at least 34 lives were lost in 45 alcohol and drug-related accidents and incidents on the railroads. In 1983 dollars, property damage has exceeded \$28 million. These totals do not include accidents presently under investigation. There is no evident abatement in the rate of accidents and injuries, and we know that we are measuring only a part of the problem.

The railroads' own prohibition on alcohol and drug use, rule G, is an important provision, but it has not provided adequate answers to the challenge. Employee assistance programs have made important contributions, certainly, but the majority of alcohol and drug abusers remain unidentified and unserved.

Therefore, I am pleased to have this opportunity to announce the issuance of a notice of proposed rulemaking on the control of alcohol and drugs in railroad operations. These proposals are based on a thorough examination of alternative solutions and benefit from the active participation of interested parties in response to an advance notice of proposed rulemaking on the subject.

The proposed rules would establish a firm federal regulatory policy that can serve as a foundation both for enforcement and for private voluntary action. Our proposals would provide enhanced means of detecting and deterring alcohol and drug use. Those means must be fair to the vast majority of responsible employees and proportional to the problem, but they must also be effective.

The proposals would foster the early identification of those employees who fall into the grip of chemical and psychological dependencies. All of the rules in the world will not stop the loss of life and property if we cannot identify these people and assure that they are provided the opportunity to pursue rehabilitation.

Finally, the proposals would help us to define the problem with greater precision. We know that existing investigatory techniques and reporting systems miss alcohol and drug involvement in many accidents. This information gap has at times lured government, the railroads, and employees into a false sense of security. We must do better if we are to sustain and refine our regulatory effort and encourage important voluntary initiatives.

Today's notice contains the following specific proposals:

First, we propose to adopt a Federal rule prohibiting alcohol and drug use in railroad operations. The rule would require that employees report to work unimpaired. Use or possession of alcohol or drugs on the job would be forbidden, except for unopened alcoholic beverages in an employee's car and therapeutic drug use under a prescription that is issued by a medical practitioner who has been made aware of the nature of the employee's duties. The rule includes a per se impairment standard for alcohol of .05 percent in blood alcohol content.

Second, we propose to require mandatory post-accident testing after:

Any train accident that involves a fatality or reportable injury or damage to railroad property of \$150,000 or more or release of hazardous materials, except in a de minimis situation;

And any train incident that involves a fatality or loss of an eye or limb.

Grade crossing accidents and incidents involving trespassers would be excused from the testing requirement, since the principal causes of these occurrences seldom involve error on the part of railroad employees. We estimate that approximately 550 events per year would require toxicological testing.

This program would require the cooperation of the railroads, employees and the Department of Transportation, which will be responsible for analysis of the blood and urine samples provided. The tests will be conducted on samples shipped by the railroads to the FAA's Civil Aeromedical Institute Laboratory in Oklahoma City.

Third, we propose to require improved accident reporting. The proposed rule would require the railroads to make specific inquiry into possible alcohol and drug involvement in train accidents and to report any information obtained, whether or not the railroad deems the information material to the cause of the accident.

Fourth, we propose to require preemployment drug screening for employees in safety-sensitive functions. The rule would require that urine samples from all final applicants for hours of service positions be subjected to a drug screening as a part of existing preemployment physical examinations. Let me mention that one railroad has been doing this with success for years.

Fifth, we propose to authorize the railroads to test employees where there is just cause. Railroads would be authorized to test employees: On a reasonable suspicion of current impairment; after reportable accidents and incidents; and after certain serious operating or safety rule violations involving the potential for train accidents.

Employees could be required to provide breath or urine samples or both. Any employee tested would have the right to demand a

blood test at a medical facility. The proposed rule contains other appropriate safeguards to assure that results are reliable.

We are proposing a limit of three negative tests per year. It is neither fair nor efficient to subject sober employees to repeated tests.

Sixth, we propose to institute policies that will promote the identification of troubled employees. The rule mandates adoption and implementation of two complementary policies.

One is a voluntary referral policy. Each railroad would be required to permit an employee affected by alcohol or drug dependence or a related condition to maintain an employment relationship with the railroad. The employee would be allowed adequate leave to facilitate treatment. This policy would apply under the following circumstances:

The employee would have to step forward and request assistance or the employee's union would have to do it for him or her;

And second, the employee would have to agree to undertake and successfully complete an appropriate course of treatment. Confidentiality would be maintained unless the employee failed to complete primary treatment. Railroads would be free to implement more liberal policies in the interest of promoting referrals.

The proposed coworker report policy is a very important part of this rulemaking. Historically, the railroads have attempted to hold coworkers responsible for reporting rule G violations through the standard code of operating rules. Since the railroads have dismissed violators identified in this manner, there have been few cases where coworkers have actually turned in rule G offenders and most violations have gone undetected.

Each railroad would instead be required to adopt a policy permitting first offenders under rule G to maintain an employment relationship if the offense is detected as a result of a report from a coworker that the employee is apparently unsafe to work with. This will permit a limited bypass of the disciplinary process and is similar to bypass agreements in effect on a minority of railroads today.

The following conditions would apply:

The employee would be required to waive the disciplinary hearing and report to the employee assistance counselor or other professional engaged by the railroad for evaluation.

If the employee requires treatment, the railroad would be required to provide a leave of absence to permit treatment. On successful completion of primary treatment and a return to service physical examination, the employee would be required then to be returned to service.

If the employee does not require treatment, the employee would be returned to service within 15 days, but the railroad could require completion of an education and awareness program.

Mr. Chairman, the rules I have outlined would apply to employees subject to the Hours of Service Act. I understand that alcohol and drug abuse are no respecters of craft lines and that employees such as car inspectors and maintenance of way employees work in the railroad operating environment. However, we have attempted to address employees in the functions most directly related to operational safety, as demonstrated by the accident data. This is an ini-

tial regulatory effort, and we believe our focus should be specifically directed at those areas of greatest need.

Let me conclude my remarks by saying this is only a beginning, albeit a very important one. We expect to encourage full and frank participation in the public hearing process.

Our ultimate objective is to reach individual railroaders with a message that is credible, a message that they perceive to be in their best interests. This kind of communication will require more than regulations.

Today the National Planning Committee on Alcohol and Drug Prevention Programs will be meeting here in Washington. It is composed of senior leaders of labor and industry and is supported by a working group of persons with expertise in the alcohol and drug field. The working group has been meeting regularly over the past 6 months.

We hope and believe that the planning committee will set into motion a national prevention program. In time, this should become a sustained effort to educate managers, supervisors and employees in the dangers of abusing alcohol and other drugs and the importance of reaching those who need help. The National Planning Committee can also help to strengthen employee assistance programs across the industry, assuring that successful techniques are shared among the participating companies and labor organizations.

Solving alcohol and other drug problems will require regulations, but regulations alone cannot do the job. We earnestly solicit the support, the counsel and the cooperation of all those interested in safety on the railroads as we progress on these parallel and complementary paths. We look forward to working with you and the members of the subcommittee.

This concludes my oral statement. I also have a somewhat more detailed written statement which I would like to submit for the record, Mr. Chairman, if I may. And Federal Railroad Administrator John Riley is with me today and we would be pleased to respond to any questions you may have.

And I appreciate this opportunity to present our proposal.

Senator DANFORTH. Thank you, Madam Secretary.

Mr. Riley, do you have anything to add at this point or would you defer to the question and answer period?

Mr. RILEY. Well, I think the Secretary has covered the field pretty well, but there is one thing I would like to add. The Secretary is here and was kind enough to mention me, but I do want to mention a third name, an attorney named Grady Cothen who played an essential role in every stage of this process in putting the rule together. And with that I would yield the chair back to you.

Senator DANFORTH. Well, thank you very much. Madam Secretary, thank you.

This is really first rate. It is my understanding that you welcome the input from both the railroads and railroad labor and, that you have discussed this with them during the process of putting the proposed regulations together.

Secretary DOLE. That is right. In fact, Mr. Chairman, we have worked for a number of years with the railroads, with management and labor to try to voluntarily come to some conclusions. A number

of proposals have gone forward, for example the establishment of employee assistance programs. Two railroads have rule G bypass plans.

Progress has been made, though we felt in 1982, when the survey was made, that it was not moving fast enough on the voluntary basis alone and therefore we did feel it was necessary. When I came into office I looked hard at this situation. I felt that the time had come for Federal regulation.

But I do want to stress the importance of being on the dual track, working with railroad management and labor to find ways to address these problems on a voluntary basis as well as through the Federal regulations.

Senator DANFORTH. What would the timetable be for the regulations?

Secretary DOLE. We hope to have the final rule ready in September. In 30 days—the rule is being published, the notice of proposed rulemaking, today and 30 days from today we intend to begin hearings. We will have hearings in four cities: in Chicago, Denver, New Orleans, and Washington. We hope then by September to be able to come to some final conclusions.

Senator DANFORTH. Does Congress have to do anything? Do you need any statutory changes, any appropriations, or anything else that is required?

Secretary DOLE. No. We just look forward to having your input and working with you as we move forward through the rulemaking process. We do want to make this what I will call an expedited proceeding, because many years of thought have gone into it.

We have had a great deal of work, as we both mentioned, with the railroads, both labor and management sides, and I think we can move this fairly quickly now, to hold the hearings and to come to some final conclusions on the regulatory side.

Senator DANFORTH. Let me just ask you, for my own knowledge, this question. Let us suppose that a railroad employee is habitually drunk or on drugs and everybody knows that. What happens to that person? Is that person fired?

Secretary DOLE. Well, first of all, right now there is really not the means of detecting fully those persons who have a real drug dependency problem. I think one of the most important parts of this rule is the coworker provision.

Senator DANFORTH. But aside from the coworker provision, let us suppose that somebody violates the first part of the proposed rule and is frequently drunk. What happens then?

Secretary DOLE. Well, if management becomes aware of this problem, then dismissal under rule G is what the railroad rules would require.

Senator DANFORTH. Is that required by this rule, dismissal?

Secretary DOLE. Well, this is something that—in other words, we do not have direct sanctions over the employees. What we are doing here is laying out a national policy. We are providing minimum standards. The enforcement in terms of the sanctions against employees would come from the railroads, who have quite an elaborate system set up through rule G.

The problem is that rule G has not been totally effective by any means, because it has been impossible in many instances to identify those persons who have problems.

Senator DANFORTH. So your theory is that if we can detect the people who have the problem, then the result will be they will be fired?

Secretary DOLE. Well, you know, again, as I say, I think clearly management, when they find a person who has a real problem of drinking, certainly dismissal has been the traditional sanction. That is what we expect will occur under the rules.

Senator DANFORTH. But I am told that in the Livingston, LA, case the same engineer who was involved in that incident had been fired twice and suspended six times by the railroad for various safety violations, including drinking and allowing unauthorized employees to operate his locomotive. And yet he was still employed.

Secretary DOLE. Well, I think in the past the fact that there was not the evidence has permitted the opportunity for plea bargaining. In other words, the inability to detect with certainty has undermined the strict penalty, and it is a matter of now having the evidence, in other words being able to back it up with firm evidence. But there has been plea bargaining in the past.

Senator DANFORTH. Do you think that there is any additional requirement, such as licensing, that we should impose so that there would be some set of enforcement mechanism to cover people who are drunk or on drugs?

Secretary DOLE. Mr. Chairman, I do not think that that is the way to go at this point. I feel that there are other requirements. In the past, it has not been possible to utilize them because of the problem of detection.

Also, let us look at the information that is required by FRA. The reporting requirements are being changed now. In the past when an accident took place—well, the current situation is that the railroad would provide the primary cause and the contributing cause.

We find that in two-thirds of the accidents that we have investigated where we discovered alcohol and drugs, there was no report of alcohol and drugs on the forms that were provided to the Federal Government. So this is also very important, to change the reporting so that not only do the railroads report any instances of alcohol and drug abuse, but also they have to go out and look for it.

You see, it is a matter of really getting the data.

Senator DANFORTH. But yet, as I understand it, even if it were detected, known, and in fact reported, there would be no enforcement mechanism.

Secretary DOLE. On the part of the Federal Government—

Senator DANFORTH. There would be no assurance that the employee would not still be out on the train.

Secretary DOLE. Well, again I go back to the strict rules that the railroads do have in place, and I think what we are doing here enables them to utilize those rules, because detection and having the information provides basically the certainty which is needed to utilize those strict penalties.

Now, the final aspect of this is, we can penalize the railroads.

Senator DANFORTH. We can?

Secretary DOLE. Yes, we have the authority there.

Senator DANFORTH. Do you mean that if the railroad said, well, here are our reports and we have had 20 employees who were drunk and they are still on the job, then you can penalize the railroad?

Secretary DOLE. I am sorry. Would you repeat that once more? We were talking.

Senator DANFORTH. Sure. Supposing the railroad had 20 accidents in a year and they filed 20 reports and they said: In each instance we had drunk engineers, and that is fine with us. We do not mind. They are good employees when they are sober.

Secretary DOLE. No. There are specific requirements in the rule as to how the railroads have to carry out the provisions of this rule. We would then have the authority, of course, to penalize if in fact the railroads do not carry out the provisions of the rule. But they are responsible for the enforcement.

Again, I would just have to stress that I think what we are doing here provides the underpinning to make their rules a success, whereas in the past they have not been able to fully utilize them because of the problem of detection.

John, you may want to comment on that.

Mr. RILEY. Senator, my experience in going over the record and during the field hearings has not suggested any evidence that the railroads have failed to act firmly when they have the evidence on which to act. But there are two problems that have undermined the strict rule G penalty.

The first is the obvious one, that without the ability to detect they cannot locate the people. The second is more subtle but very real: When you do not have the ability to develop firm, tangible evidence of alcohol use, all of the cases end up in arbitration, they all end up before grievance committees.

What happens is you get into a lengthy grievance process where claims are swapped against claims, claims that do not involve alcohol are swapped against ones that might. And the lack of firm, tangible, readable evidence has undermined the strict application of the rule.

Senator DANFORTH. Well, in the drunk driving area making the case is almost impossible, frankly. Even with specific blood alcohol requirements, it is almost impossible in a courtroom setting to make a case that a person was in fact drunk. There are allegations that something was wrong with the testing mechanism, that the testing was improper, and so on.

Would this process in your opinion lock it up? Would this really prove with absolute certainty that a person was drunk or on drugs, or is this going to continue to be a matter that will be in dispute?

Mr. RILEY. Senator, I do not think there is a process that we can devise which will ensure absolute certainty, but I do believe this will put us at the state of the art in our ability to detect. And if it turns out that after implementation of this rule we detect a pattern of non-enforcement after detection, then we will act as appropriate.

It is our belief, based on the evidence we have adduced at the hearings, that the industry and the unions frankly are prepared to

act because they are concerned about the problem, and we are prepared to act in consequence if they do not.

Senator DANFORTH. With respect to the fifth part of your proposal, that is the part that authorizes the railroads to test employees where there is just cause, I suppose this refers to such cases as where a reasonable supervisor believes that a person appears to be under the influence of alcohol or under the influence of drugs, and therefore should have a test, a urine test, a blood test, a breath test, or whatever.

Is it specified what kind of test is authorized?

Secretary DOLE. It is the breathalyzer.

Senator DANFORTH. For alcohol?

Secretary DOLE. Yes, and the urine for the drugs, for example.

Senator DANFORTH. But not blood for either?

Secretary DOLE. The employee has the right to ask for a blood test and that can be done at an independent facility. That would apply.

But this is the situation where the supervisor must observe. It could not be hearsay, that someone says someone has the appearance of being under the influence of alcohol or drugs. The supervisor would have to determine that through such things as objective criteria, the appearance, for example, or if there was slurred speech or unusual behavior of the individual.

The supervisor would have to lay that out in a very clear, articulate way exactly what the basis was for this. But also, there is the opportunity—of course, it provides in three areas, after an accident or an incident or after a violation, a serious violation of the rules which could lead to an accident or an incident.

Senator DANFORTH. This authorizes the railroads to perform the test. It does not require them to perform the test. Most of the provisions in this proposal are put in terms of mandatory requirements. This is just a matter of granting authority.

Do you think this should be a requirement rather than just an authorization?

Secretary DOLE. Well, we feel that in this instance the railroads have sought to have the authority to provide for testing, and I do not think that there will be a lack of utilization. We have tried to provide this in a way that there are safeguards as well, because I think it is important here that we will be working very closely with both management and labor to come up with proposals that are going to have credibility all the way around and that it will be respected.

Senator DANFORTH. Under this provision, a particular railroad could have a policy that if an employee shows up at work and he appears to be drunk or he appears to be otherwise impaired, the railroad will not perform any tests.

Secretary DOLE. Mr. Chairman, I just do not think that is a problem. One of the things about this rulemaking, this proposed rule, is that it is based on a great deal of field experience, going out and observing the situation, spending a lot of time with employees, with management. And it reflects, I think, the realities of the situation as it exists today.

I do not think that that is a problem. But let me just say again, I think that this will be utilized in appropriate instances.

This again is a notice of proposed rulemaking, however, and if during the period of time that we are taking comment—we are open to suggestions, to ideas, to working with all interested parties. This is not locked in cement at this point.

But I am impressed with the fact that this rule has had so much field work involved, and I think it is a very realistic portrayal of the situation and I think that under these appropriate circumstances those tests will be made.

Senator DANFORTH. It just seems to me, that if the tests probably will be done, then why not require them to be done?

Mr. RILEY. Senator, where do you draw the line in the most fair and efficient way between mandatory testing and permissive testing is something that can always be in dispute. But we drew the line based on the magnitude of public risk, that is, the mandatory post-accident testing is keyed to the serious accident or the occurrence that involves a significant likelihood of alcohol or drug use and a very pressing need to know of any such involvement.

As you go below that line, we have established three categories. Categories such as violation of an operating rule or a smaller accident are cases which may or may not involve alcohol use. We felt it was most efficient and most fair in these cases to let the railroads exercise some judgment, because, as you know, passing a signal may be an indicium of alcohol use, it may just be a sloppy operating practice.

Senator DANFORTH. But where there is just cause, why shouldn't the tests be required?

Mr. RILEY. Well, Senator, perhaps I have hung everyone up on the use of the term "just cause." What we are trying to say is, in certain categories of occurrence the probability of alcohol or drug involvement is so high that there must be tests. In others it is possible and, because of the possibility status of those, we should grant discretion in administering the test. In others it is so low or remote that we should not grant discretion.

Now, where one draws those lines is at the outer edge of our knowledge of this entire problem. We are going to have to evaluate them in practice.

Senator DANFORTH. Well, let me ask you this. If it would appear to the supervisor that it is more probable than not, based on the supervisor's experience, that alcohol has been involved in the accident, then should a test be required?

Mr. RILEY. That is basically the criteria we have tried to use in drawing the line we have drawn in the rule. My experience in the field has been that the railroads are literally thirsting to use these devices and our problem is holding them back and not putting them off. If it turns out to be different, obviously we will change the rule.

Senator DANFORTH. Well, you might just look at it. The first I saw of this rule was yesterday afternoon, and I do not know. I am just throwing out this question.

I have just one other question. With respect to the sixth part of the proposal, the part dealing with voluntary referrals or coworker referrals, could this operate as a kind of immunity, a self-granted, immunity provision? Let me just give you an example.

Let us suppose that there was an accident and the employee was about to be tested, and the employee was clearly drunk. Could the employee say: Wait a second, I am voluntarily referring myself to you. I have been under the influence of alcohol. Therefore, put me in a program.

Secretary DOLE. No; in that instance, that would not be possible, no, neither postaccident nor in that kind of situation where it is imminent.

Senator DANFORTH. You could not bail yourself out by leaping through this hole?

Secretary DOLE. No, that is right.

Senator DANFORTH. Let me ask you just one final question with respect to the sixth part of the rule. This really pertains to a person who has a chronic problem, an alcohol problem or a drug problem. This has to do with treatment. This is an effort to get people into a treatment program, as I understand it.

Let us suppose we have somebody who really is not an alcoholic or is not drug dependent. Let us suppose that it is a person who shows up drunk once a year. I think you made a finding that 5 percent of the people showed up very drunk at least once during your study year.

Now, if an employee turns in a person who shows up very drunk once, is that person going to be referred to a treatment program? Is that the kind of person who should be in a treatment program?

Secretary DOLE. Well, there is a provision that if in fact the individual does not require a rehabilitative program that within 15 days he would be returned to the job. In other words, the decision would have to be made on the part of the management.

Senator DANFORTH. Well, but under this hypothetical, somebody who once a year gets very, very drunk, could simply advise his coworkers accordingly, and they, in turn would tell the supervisor: Look, under this provision I want to turn this person in. What is the remedy for that?

Secretary DOLE. Well, when the employee, the coworker, turns him in, either he would be dismissed or he can elect the one-time bypass, in other words to be returned to work within 15 days.

Senator DANFORTH. So the coworker turning him in could lead to his dismissal under those circumstances?

Secretary DOLE. If he did not elect bypass. If the worker says, I want to take bypass, then no, I want to come back to work, within 15 days he would be reinstated.

Senator DANFORTH. Then he would not be fired?

Secretary DOLE. Under those particular circumstances, that is right. However, the railroad will have identified a person who clearly requires enhanced supervisory attention.

Senator DANFORTH. Well, as I say, I have not really studied these and I do not want to zero in with tunnel vision on particular items. I was just curious as to how these would apply.

I do want to compliment you on these regulations. I think this is really a very good thing and a step in the right direction. As I understand, right now there are no rules, right now there is nothing, and you have replaced nothing with something, which I think is potentially very, very helpful. I compliment you.

Secretary DOLE. Thank you, Mr. Chairman.

I think one of the things I would like to stress about this is it is not just a matter of protecting the public, which is extremely important, but it is also a matter of helping individuals who are in need of assistance, trying to find those people who need that rehabilitative assistance, who need to be helped, and also to point out to those who are the occasional social drinkers or whatever that indeed, with detection, they had better rethink that particular habit because we mean business here. We are going to work to clear up this problem on the railroads.

Senator DANFORTH. Thank you.

Senator STEVENS.

Senator STEVENS. Thank you, Mr. Chairman.

I want to congratulate you, too, Madam Secretary.

Secretary DOLE. Thank you, Senator.

Senator STEVENS. I would like to know, is there a difference between those who are in an operating role and those who are in more passive roles as far as employment on railroads? In aircraft we have a different standard for people who fly the airplanes. And trucks, we have different standards for those who drive trucks.

What about in this situation? Is there a different standard?

Secretary DOLE. This would be employees, hours of service employees, in other words those who are in operational hands-on positions, which are the most sensitive safety positions, such as train and engine employees, block operators, dispatchers, and signalmen.

Senator STEVENS. Only those?

Secretary DOLE. That is right, these particular measures apply only to those.

Senator STEVENS. What about the preemployment screening? Will that apply to those people, too?

Secretary DOLE. That is right, yes. This particular set of regulations does apply to those who are subject to the Hours of Service Act.

Senator STEVENS. You have said here that this is just the beginning. What comes next?

Secretary DOLE. Well, what I meant by that was, this is the announcement. But over the next couple of months we look forward to working with all interested parties to come up with a final rule that reflects all issues and all concerns. That is what I intended by that.

But I think there is still a great deal of work to be done. It is not all going to be resolved just with these Federal regulations.

Today the National Planning Committee is meeting. It is a voluntary organization which has been working for the last 6 months with the Federal Railroad Administration, management and labor representatives, to try to promote the use of employee assistance plans, to look at the rule G bypass, to provide for education and awareness programs for employees, to do a number of things on a voluntary basis that will make real strides.

I think we need to continue in that vein, as well as with the Federal regulation. And of course, as we move along we will have to determine how this works. But it is our best judgment, after having studied this very closely, that we should proceed in this way.

We have had a year, Senator Stevens, of looking at this through an ANPRM. At the time that I came into office, I felt that we were

at a point where we needed Federal regulations, but the positions were quite polarized at that point and it was obvious that in order to get a dialog going we needed a public forum to discuss these issues and to sit down management, labor, and everyone together and reason on this.

And I think that the months that we have been involved in that process has really been extremely useful to us in laying out these proposals today.

Senator STEVENS. Have these proposed regulations been preliminarily approved by labor and management? Are you saying that?

Secretary DOLE. Well, they of course are not subject to approval. But I would just say that in having produced these particular proposals we certainly are taking benefit of the input from both management and labor, as well as other members of the public.

I believe that we have a good opportunity here of coming up with something that all the way around will be regarded as a wise way to proceed, a set of rules that will be respected and followed. I would just say that in my initial visits with members of management and labor I think that the feedback I have gotten is that we have something we can truly work with here, that this is a responsible way to proceed.

Senator STEVENS. In your review of this, has there been any indication that legislation will be required to carry out the objectives of your proposed rules?

Secretary DOLE. No, and I hope that we can finalize this by September.

Senator STEVENS. Fine. I congratulate you, too. I think this is a good step and one that is overdue.

Thank you, Mr. Chairman.

Senator DANFORTH. Thank you, Madam Secretary for your very fine testimony. And thank you, John.

Secretary DOLE. Thank you so much.

[The statement follows:]

STATEMENT OF HON. ELIZABETH H. DOLE, SECRETARY OF TRANSPORTATION

Mr. Chairman, any effort to address the problem of alcohol and drug use in railroad operations must begin with dual premises.

First, the public is entitled to protection from accidents caused by railroad employees who are impaired by alcohol or drugs. We should safeguard that right by regulations having the force of law and by a national commitment to enforcement of these regulations.

Second, we are dealing with individual human beings. Those who drink or use drugs in connection with railroad operations are a small minority of railroad employees. Out of addiction, dependence or bad judgment, they often report to work impaired or bring alcohol or drugs onto the railroads.

The challenge is twofold: to locate those who need help to overcome their dependencies, and to deter those who use alcohol and drugs as a matter of choice. One cannot simply waive the magic wand of government regulation and expect that the problem will disappear. If it were that easy, Rule G—the railroad's own strict prohibition on alcohol and drug use—would have dried up the industry a century ago. Rather, we must find new tools to change old attitudes and habits. These new tools must reinforce, and not undercut, the positive steps that have already been taken by labor and management.

These two facts of life define the nature of our responsibilities. The Federal Railroad Safety Act of 1970 requires that we issue appropriate regulations as necessary to promote railroad safety. The railroads and their employees have a responsibility to ensure that human life and property are safeguarded through ongoing prevention activities. These responsibilities are inextricably intertwined, even though imple-

mentation of various measures may proceed along different paths. Government, labor and the railroads must work together if this problem is to be solved.

ACCIDENTS AND CASUALTIES

We have attached for the information of the Subcommittee a table summarizing train accidents and train incidents (injury-causing events related to movement of on-track equipment that involve little or no property damage) that were caused, in whole or in part, by the errors of alcohol or drug-impaired employees in the period 1975 through 1983. It shows that alcohol or drugs were involved in at least 45 accidents and incidents during that period, claiming 34 lives and causing over \$28 million in property damage and clean-up costs (in 1983 dollars). These totals are very conservative. With the exception noted, they do not include incidental costs or damage to non-railroad property. Data for non-train incidents (such as injuries in shops and other industrial settings) are not included.

The table shows the consequences of train accidents and incidents in which the role of alcohol or drugs has been documented. We believe that there have been many additional accidents and incidents that involved alcohol or drugs as a major factor but do not show up in the records as such. Alcohol and drug involvement is not identified in many of these events because toxicological tests were not conducted. In other cases, important information never appears on the accident/incident reports submitted by the railroads. I want to make it clear that I am not alleging wholesale noncompliance with our accident reporting requirements. For the most part, the problem is one of insufficient effort and inadequate information systems.

Thus far in 1984 the National Transportation Safety Board (NTSB) and Federal Railroad Administration (FRA) have initiated investigations of three accidents that involve possible use of alcohol or drugs. Today in Denver the NTSB will continue a hearing on two of those accidents. FRA is participating in that process, and it would be premature to speculate on final findings of fact or probable cause.

The present high level of interest in the consequences of alcohol and drug use on the railroads offers a significant opportunity to prevent accidents caused by human failure. The national rail system is in the best physical condition it has been in the last 25 years. The equipment is the best ever. Hazardous materials cars are constructed with greater safety margins. Signal and train control technologies are advancing rapidly. But if eight-thousand-ton trains are entrusted to impaired crew members, disaster will not be avoided.

Alcohol and drug-related accidents represent a statistically small portion of the total accident picture, but each of those accidents is clearly preventable. Further, the pattern of these accidents indicates that, as a class, they tend to be among the most dangerous and damaging accidents that happen on the railroads.

RULEMAKING

The present high level of interest in the consequences of alcohol and drug use on the railroads offers a significant opportunity to prevent accidents caused by human failure. The national rail system is in the best physical condition it has been in the last 25 years. The equipment is the best ever. Hazardous materials cars are constructed with greater safety margins. Signal and train control technologies are advancing rapidly. But if eight-thousand-ton trains are entrusted to impaired crew members, disaster will not be avoided.

Alcohol and drug-related accidents represent a statistically small portion of the total accident picture, but each of those accidents is clearly preventable. Further, the pattern of these accidents indicates that, as a class, they tend to be among the most dangerous and damaging accidents that happen on the railroads.

Today, I am announcing the issuance of a notice of proposed rulemaking (NPRM) on the control of alcohol and drug use in railroad operations. I am pleased to preview the NPRM for you by summarizing its major provisions.

Some of the proposals will be controversial in some quarters. The fact is we are going to have to change the status quo if we are going to make any difference. Change is often painful. But there are few measures that could be more painful in the long run than continuing to endure the loss of life and property associated with alcohol and drugs.

We are prepared for mixed reviews and we will welcome and carefully consider the comments of all concerned. No doubt some railroads will think we have gone too far; others will perceive that we have not gone far enough. I am sure that there are issues here that will trouble employee representatives. Some of those members of the public who do not have an intimate knowledge of the railroad industry will be

disappointed that we have not tried to transplant solutions from other, disparate contexts.

What we ask is that everyone read the NPRM from front to back—it will take awhile—and consider the proposals on their own merits. I believe that when the commentators have digested our proposals they will see that we have listened and attempted to act on what we have heard. I also confident that the various parties will have specific suggestions for improving the proposed rules.

These rules would apply to employees subject to the Hours of Service Act. I understand that alcohol and drug abuse are no respecters of craft lines and that employees such as car inspectors and maintenance-of-way employees work in the railroad operating environment. However, we have attempted to address employees in those functions most directly related to operational safety, as evidenced by the accident data. This is an initial regulatory effort, and we believe our focus should be specifically directed at those areas of greatest need.

All railroads, passenger and freight, would be subject to the proposed rules. Small railroads would be excluded from the pre-employment drug screen requirements.

Our proposals are as follows:

First, we propose a Federal alcohol and drug standard.

The proposed rule would prohibit on-the-job use or possession of alcohol or drugs. (Excluded from this prohibition is the presence of an unopened container of an alcoholic beverage in the employee's personal motor vehicle.) Employees would be prohibited from going or remaining on duty while impaired by alcohol or drugs. As used in the rule, a "drug" is any controlled substance, except a controlled substance that is being used by prescription issued by a medical practitioner who is aware of the employee's assigned duties.

A demonstrated blood alcohol content of .05 percent or more would be sufficient to establish conclusive impairment.

FRA does not have the power to fine employees who violate these rules. Our sanctions run against the railroads. We have not mandated that the railroads impose specific sanctions on the employees who violate this rule, because the railroads already view alcohol and drug offenses as severe. In those cases where local supervision may fail to take aggressive action, FRA can handle the situation for correction with top management. However, there is no indication that the industry is going to abandon discipline as a tool of enforcement. The traditional sanction has been dismissal, and its very severity has led to uneven application. It is not the severity of sanctions that concerns us, as a general matter, but rather the relative certainty that they will be applied. The proposed rules seek to enhance the detection of violative conduct and to deter that conduct in the first instance.

We have not included a pre-duty abstinence period in the proposed rule for two reasons. First, it would not be enforceable in the context of the railroad industry. It is not reasonable to expect the railroads to supervise off-duty conduct of their employees, but the railroads will necessarily be responsible for day-to-day enforcement of the proposed rules. Second, it would be difficult or impossible for many employees to observe, particularly signal maintainers and operating employees who work off of "extra" or "spare" boards. These employees often do not know when they will be called for their next assignment. They may wait hours or even days for an expected call; at other times they may be called early to meet requirements brought on by operational problems or emergencies. We need rules that will be workable. In our judgment, a pre-duty abstinence period would not meet that criterion.

The rule would provide a foundation for private sector efforts and define a national policy on alcohol and drug use by employees in railroad operations.

Second, we propose to require mandatory post-accident toxicological testing.

Testing would be required after—

a. Any train accident that involves a fatality, reportable injury, damage to railroad property of \$150,000 or more, or release of hazardous materials; and

b. Any train incident that involves a fatality or loss of eye or limb.

Grade crossing accidents and incidents involving trespassers would be excluded from the testing requirement. There are hundreds of these occurrences each year and the principal causal factors seldom involve error on the part of railroad employees. With these exclusions, approximately 550 accidents/incidents per year would qualify for testing.

The testing program would require the participation of the railroads, individual employees and the Department of Transportation, as well as the help of hospitals and health care professionals. Blood and urine samples would be taken at a medical facility. The railroad would be responsible for getting employees to the facility and assuring that samples are shipped to the FAA's Civil Aeromedical Institute laboratory (or another FRA-designated laboratory), where tests will be conducted. The re-

sults would be made available to the NTSB, the railroad, and the individual employees who have provided the samples.

Employees who refused to submit to post-accident testing, having consented to such testing as a condition of employment, would be held out of covered service (safety-sensitive service subject to the Hours of Service Act) for 6 months.

The proposed rule is essential to establishing the involvement of alcohol or drugs in any major accident. It would provide a concrete measurement of the consequences of alcohol and drug use, and thereby stimulate further remedial steps. The rule would also assist in identifying alcohol and drug violators before they are involved in catastrophic accidents and in deterring alcohol and drug use.

Third, we propose to require improved accident reporting.

The rule would require the railroads to make specific inquiry into possible alcohol or drug involvement in train accidents and to report any information received, whether or not the railroad deemed the information material to the cause of the accident. Simultaneous with adoption of any final rule, FRA will also implement administrative changes in the reporting system that will permit the development of more precise information concerning the role of alcohol and drugs in train accidents and, for the first time, reporting of impairment as a factor in injuries.

This rule would improve the documentation of alcohol and drug impairment as a factor in train accidents, closing existing regulatory gaps.

You will note that these first three proposals generally respond to the recommendations of the National Transportation Safety Board, which should be commended for its untiring efforts to draw attention to this problem. We believe that implementation of these recommendations is an important step. However, we believe that additional measures will be required if we are to adequately deter drinking and drug use, detect rule violations and identify employees who are in the grip of chemical dependencies. Therefore, we are proposing additional measures as follows:

Fourth, we propose to require pre-employment drug screens.

The proposed rule would require that urine samples from all final applicants for Hours of Service positions be subjected to a drug screen as part of existing pre-employment physical examinations. The railroads would have to maintain records on test results for FRA review and make summary reports. Very small railroads would not be required to test applicants.

This rule would help stem the influx of uncontrolled problem drinkers and drug users into the railroad work force and will permit the railroads to identify recreational drug users who, if hired, will require special supervision. The rule would also improve management awareness of the extent of the drug abuse problem in the population from which the work force is (and has been) drawn. The rule would not bar employees who test positive from employment. It would require the railroads to develop this additional information on the fitness of applicants for safety-sensitive positions. We believe that the railroads would act appropriately once they have the requisite information.

Fifth, we propose to authorize the railroads to test employees where there is "just cause."

Railroads would be authorized to test employees—

- (i) on reasonable suspicion of current impairment,
- (ii) after reportable accidents and incidents, and
- (iii) after certain serious operating rule violations involving the potential for train accidents.

Employees could be required to provide breath or urine samples, or both. Any employee tested would have the right to demand a blood test, with blood to be drawn at a medical facility. The proposed rule contains other appropriate safeguards to assure that test results are reliable.

We are proposing that a limit of 3 negative tests per year be set on this authority. It is neither fair nor efficient to subject sober employees to repeated tests.

This rule would permit the effective documentation of a higher proportion of alcohol and drug rule violations, reducing the subjectivity and controversy associated with complete reliance on reports of supervisory observations. In concert with the Federal alcohol and drug rule, the availability of testing techniques will encourage supervisors to take action in those cases where practiced drinkers and drug users may not exhibit all of the classic signs of acute intoxication. The rule would also permit the railroads to identify the underlying causes of human failures in accidents and serious safety rule violations. Enhanced detection capability will deter future violations among volitional drinkers and drug users and assist in the identification of those who are alcohol or drug dependent prior to their involvement in catastrophic accidents.

Sixth, we propose to institute policies that will promote the identification of troubled employees.

The rule would help to dissolve the conspiracy of silence among employees and involve them in the solution of the problem by encouraging self-referrals and referrals by co-workers before troubled employees cause transportation disasters. Employee participation is crucial to solution of the problem in this largely unsupervised work environment.

The proposed rule would mandate adoption and implementation of two complementary policies:

a. *Voluntary referral policy.*—Each railroad would be required to permit an employee affected by alcohol or drug dependence (or a related condition) to maintain an employment relationship with the railroad and to afford the employee adequate leave arrangements to facilitate treatment. This policy would apply under the following circumstances:

- (i) the employee would have to step forward and request assistance or the employee's union would have to do it for him; and
- (ii) the employee would have to agree to undertake, and successfully complete, an appropriate course of treatment.

Confidentiality would be maintained unless the employee failed to complete primary treatment. We do not believe a total guarantee of confidentiality is appropriate for a Federally-imposed policy.

This option would not be available to an employee who has already been charged with a Rule G offense or other offense warranting dismissal.

There are some railroads that actually go beyond this proposed policy, guaranteeing no adverse action even if the employee fails to complete treatment. Railroads would remain free to implement more liberal policies in the interest of promoting referrals.

b. *Co-worker report policy.*—Each railroad would be required to adopt a policy permitting first offenders under Rule G to maintain an employment relationship if the offense is detected as a result of a report from the co-worker that the employee is apparently unsafe to work with. The following conditions would apply:

(i) The employee would be required to waive the disciplinary hearing and report to the employee assistance counselor (or other professional engaged by the railroad) for evaluation.

(ii) If the employee requires treatment, the railroad would be required to provide a leave of absence to permit treatment. On successful completion of primary treatment (as determined by the employee assistance counselor) and a return-to-service physical, the employee would be required to be returned to service.

(iii) If the employee does not require treatment, the employee would be returned to service within 15 days, but the railroad could require completion of an education and awareness program.

The rule would promote early identification of employees who have alcohol or drug abuse problems by enlisting the support of co-workers, who generally have refused to "turn in" troubled employees and other rule violators for fear that they would be dismissed. Co-workers would be provided with leverage to encourage self-referrals. Where troubled employees refuse to seek help, co-workers would be able to refer them for help, based on the assurance that they would be provided an opportunity for rehabilitation. Co-workers would also be encouraged to refuse to work with those who bring alcohol and drugs onto the railroad as a matter of choice.

Let me conclude this description of our proposals by emphasizing that the problem we face is complex. We dare not underestimate, but we will miss the point if we overestimate it. The great majority of railroad employees are not the problem. There is no new epidemic of drinking and drug use. Most railroad employees observe the rules, perform their duties with care and pride, and fear working with those who come to work impaired or bring their substances of abuse into the work place. Rule G does have some deterrent effect, and employee assistance programs are reaching literally thousands of problem drinkers and an increasing number of drug users, as well. If we are to progress, we must appeal to the majority of employees whose attitudes can make the difference. If we are to progress, we must recognize the strengths inherent in existing rules and programs.

Our proposals seek to build, rather than undercut. At the same time, we are making preliminary recommendations to the railroad industry, labor and management, concerning the refinements in collective bargaining relationships and carrier policies that will be necessary if we are to have an integrated and fully effective partnership for change. How the industry responds to our proposals and recommendations will determine in large measure whether, in this generation, alcohol and drugs can be banished from the railroads.

PREVENTION

Today Federal Railroad Administrator John Riley and I will be speaking with the National Planning Committee on voluntary programs to prevent alcohol and drug abuse in the railroad industry, once again stressing how crucial voluntary prevention efforts are to the solution of the alcohol and drug problem.

For the past six months the National Planning Committee has been working to identify strategies for joint action to establish and improve voluntary programs to prevent the use of alcohol and drugs in the workplace. It is composed of top leaders from the national rail labor organizations and the railroads. These organizations have designated knowledgeable people to serve as members of a working group that has met regularly since last November's national conference. FRA is participating, as well. Today and tomorrow, here in Washington, the full Committee will be hearing the recommendations of its working group.

My hope is that voluntary action will achieve two objectives in the short run. First, we need to get started on concrete, immediate prevention measures that will raise the level of awareness of managers line supervisors and all employees concerning what can happen when an employee is impaired by alcohol or drugs. Second, we must assure the continuity of the voluntary effort so that today's momentum for effective action does not dissipate with the passage of time. We do not need organization for its own sake, but without some form of organization alcohol and drug prevention efforts will fade as quickly as the inevitable headlines that are occasioned by alcohol and drug-related train accidents.

I ask for the continued support of this committee for this voluntary effort. Historically, there have been some in the Congress who have asked why an agency responsible for developing rail transportation policy and regulating safety is sponsoring conclaves on occupational substance abuse problems. I understand the question. However, nothing could make a more direct contribution to the safety and efficiency of rail transportation than an enlightened and sustained program to prevent alcohol and drug use; and I believe we can provide effective leadership in this field.

We are already seeing signs of additional movement. You will hear in some detail this morning about Operation Red Block on the Union Pacific Railroad. That program unites major labor organizations and the carrier in an exciting effort to identify those who need help before they get in trouble and to deal firmly but humanely with those who slip. The Department of Transportation does not take credit for that effort. It is home grown. But I think we have contributed to the climate that is making it possible.

I believe we need a national prevention program that will reach, through one means or another, into every railroad terminal in the Nation. We will be working to assist in the establishment of such a program.

CONCLUSION

The alcohol and drug problem deserves public attention and concern because it affects public safety. However, we must not forget that we are dealing with human beings, employees who raise families, operate private motor vehicles, and participate in our society as a whole. If they need help to defeat chemical or psychological dependencies, they should be encouraged to get it. If their conduct is facilitated by tolerance of alcohol and drug use in the workplace, then the attitudes in that workplace will have to be changed.

The challenge is a big one. Rules will be required, but rules alone will never be sufficient.

SUMMARY OF ALCOHOL AND DRUG-RELATED RAILROAD ACCIDENTS/INCIDENTS (1975-83)

(Dollars in millions)

	Number	Fatalities	Injuries	Damage
Train accidents investigated by FRA	15	14	61	\$12.1
Other train accidents reported by the railroads	10	0	5	.2
Total train accidents	25			
Employee casualties/train incidents ¹ (ops only)	20	20	NA	
Total accidents/incidents	45			
Total fatalities		34		
Total injuries			66	

SUMMARY OF ALCOHOL AND DRUG-RELATED RAILROAD ACCIDENTS/INCIDENTS (1975-83)—
Continued

[Dollars in millions]

	Number	Fatalities	Injuries	Damage
R.R. Damage total.....				12.3
R.R. Damage total (1983 dollars)				16.3
Total damages (1983 dollars)				* 28.6

¹ A train incident is an event involving the movement of railroad on-track equipment that results in a death, a reportable injury, or a reportable illness, but in which railroad property damage does not exceed the reporting threshold for train accidents. This listing does not include fatalities to non-operating employees.

² includes additional Livingston, La., damages of \$12.3 million (principally environmental clean-up) (uninflated) but not damage to lading or third party property in the other accidents.

Notes: (1) In this listing, one reported train accident that involved minor property damage has been listed with train incidents because it was investigated by FRA as an employee fatality.

(2) This listing does not include alcohol and drug-related fatalities in non-train incidents—i.e., in settings other than railroad operations.

Senator DANFORTH. Our next witness is the Honorable Patricia Goldman, Member of the National Transportation Safety Board.
Ms. Goldman, thank you very much.

**STATEMENT OF PATRICIA A. GOLDMAN, MEMBER, NATIONAL
TRANSPORTATION SAFETY BOARD**

Ms. GOLDMAN. Thank you, Senator Danforth. It is a pleasure to be here this morning on behalf of the National Transportation Safety Board, and I might say it is a pleasure to find this kind of attention focused on the problems the Safety Board has been talking about for some years.

It is also a pleasure to hear the rules announced by the Department of Transportation that Secretary Dole and Mr. Riley have just outlined. It seems that the testimony I had planned to give has been reasonably well covered by yourself in describing some of the accidents and by the Secretary in talking about the rules that the Safety Board has been advocating for some time. Therefore, I suggest that my prepared statement be entered into the record and I will try to touch on a few points and perhaps respond to questions.

I think the cases such as the ones you cited in Sullivan, IN, and in Livingston, LA, are important ones. There is also a chart that we have prepared at the Safety Board of the nine accident and incidents that we have either investigated or are currently under investigation at the Safety Board.

I might point out, in addition to the numbers, a little more realism: They have resulted in 14 deaths and in property damage of \$23.2 million. These are not remote possibilities. They are realities.

I think the public is finally beginning to become as aware of the threat of alcohol and drug abuse on the railroads as they have been on the highways. There is no more tolerance for abuse. The Livingston scenario may seem remote to many people, and it happened in a reasonably small town. That kind of thing happening, obviously, in a large community could have much more devastating effects, and I think people are beginning to realize that.

As we talk about the rules, I think it should be pointed out that obviously many railroads are individually—or at least I should say some railroads individually—are beginning to take action. We find that very commendable, but I think it should be stressed that obvi-

ously this kind of voluntary effort, because it has already been tried, is not going to do the job by itself. That is why the Safety Board has been making the recommendations.

I think the employees of the railroads—and why this is beginning to gain currency—are also aware of it. There is a saying in the aviation community, it is black humor, that the pilot is the first person to the scene of the accident. All too frequently we have been seeing this in these last several years that the same applies to the people who are operating the railroads.

Sometimes the most innocent of people, who have not been those who have been abusing alcohol or are drug dependent, have been caught in these scenarios. That is the case, for example, in the Sullivan, IN, accident that you were talking about. The people who did not have a problem with alcohol were the ones who lost their lives, and I think that should be pointed out.

I'd like to review the recommendations that we have made at the Safety Board, because I think they bear repeating. In March 1983, the Safety Board made a series of recommendations to the Federal Railroad Administration. We first suggested that they should immediately promulgate a specific regulation, with appropriate penalties, prohibiting the use of alcohol and drugs by employees for a specific period of time. They have obviously taken a step towards that.

The Safety Board has been made aware by the Administrator of what was coming. We have not had an opportunity to review these rules in detail. We will and we will be commenting upon them. They seem, in our first hearing, to be beginning to meet the spirit of what we have been asking for and we want to make sure that they meet the final objectives.

And I think what seems to be inherent is that the railroad employee has to also participate by breaking the conspiracy of silence that has existed.

We also recommended that the Federal Railroad Administration require railroad management to improve the supervision of train crew members to ensure that alcohol or drug-impaired employees are not allowed to operate trains. We have heard for a long time that this is impossible. The remoteness of many of the crew change locations, where people come on duty makes it difficult.

But I would point out that there are many, in fact probably a preponderance of times, where the crew change locations are in more populated areas. This can be done in a variety of ways, including spot checks. It does not have to be a regular thing. So I do not think this is as impossible. Nor does the Board think is as impossible as some people have claimed.

We have also suggested that there should be a requirement for the timely toxicological test, which you discussed earlier in the colloquy with Mrs. Dole. We have had a very difficult time at the Safety Board, even in those investigations that we have pursued. Sometimes we may have been aware from conversations, from other coincidental evidence, that there has been use of drugs and/or alcohol, but we have not been able to prove that.

And in the Sullivan, IN, case that you mentioned, it was alertness on the part of several people that finally allowed us to get the

tests in that regard. If we would have had to wait until our investigators got there, the evidence obviously would have perished.

In the case of Sullivan, there was a very alert doctor in an emergency room that admitted the engineer. He alerted the local sheriff's department. The local sheriff's department sent an officer out and, through great perseverance on his part, he went all over town in order to get the necessary legal documents before the test was finally enabled, because the employees had refused to take it. And it was really some individual citizens who were very concerned who did that.

We cannot rely on that kind of thing happening. It is not likely to happen in many circumstances, so we must have support.

We had also suggested that the FRA and the railroad industry develop regulations that would require the full reporting of all possible alcohol and drug-involved incidents and accidents, including grade crossing accidents. This has also been discussed this morning. Again, to carefully frame the kind of solutions that will get at this problem, we have to have the data.

The previous Administrator, Bob Blanchette, had said at a railroad meeting just before he left office that he knew that their own statistics were incorrect because they were not getting this kind of reporting, as was pointed out this morning.

I would like to point out a couple of things, having summarized the recommendations. We cannot depend on arbitration to handle what is a safety issue. I do not think safety should be a matter of arbitration, and that is something that concerns the Board very much in the way things have been handled.

Also, because perhaps it is easier for many of us to understand alcohol, we keep using alcohol, alcohol, and the drug dependency is an equal problem. You have a younger generation of people coming into the railroad industry, where perhaps drugs might be the recreational choice rather than alcohol. I think that is something to which we are going to have to pay a great deal more attention. We at the Board are trying to find ways to incorporate that in our accident investigations.

In closing, let me say that the Safety Board realizes that for many our position on these matters of alcohol and drugs is difficult to accept. If the FRA changes go through, which seem to incorporate our recommendation, it is going to mean greater restrictions for some and more effort on the part of others.

But we think that the alcohol and drug abuse issue on the railroads is a ticking time bomb. We would like to see this ahead of time. Too often the Safety Board has to come in after the catastrophe has happened. We would like to see something done beforehand and not have to be talking to you about another accident down the pike.

Thank you, Mr. Chairman.

Senator DANFORTH. Thank you very much.

Do you have a view as to the seriousness of this problem? Is alcohol and drug abuse widespread on the part of people who are operating trains?

Ms. GOLDMAN. I am having to go, Senator, on the same information you are, to the 1979 study. It seems to give a very bad picture.

And we do not have the kind of data that would give us a good picture.

I think it is more widespread than it should be. Any use by a person operating a vehicle in the public transportation sector is too much. In order to get a good handle on it, we have to know that data, which I hope will come from the kind of changes that have been recommended.

Senator DANFORTH. The basic thrust, as I understand it, of the DOT's recommendations is that detection is the most important ingredient in any program. They believe that if alcohol is detected, and if drug use is detected, then the remedy will follow as the night the day.

Do you agree with that? Do you think that that is a reasonable assumption?

Ms. GOLDMAN. That has not been the case in the past. You pointed out the Livingston situation. That is a case where arbitration—safety was arbitrated, and so it has not been the case.

Senator DANFORTH. Is the proposal by DOT defective in that regard?

Ms. GOLDMAN. Well, I have to take a closer look at it to be sure. We want to make sure that that problem is taken care of in that. I have not had a chance to study the regulations. I had a brief telephone briefing, so I have not seen them in whole.

Senator DANFORTH. Well, Secretary Dole says that the railroads themselves have rules against drug use and alcohol use on the job, and that if they have a system in place where they are more likely to detect the use of drugs and alcohol, it is more likely that their rules will trigger in and that people will be relieved of their jobs.

Ms. GOLDMAN. There has to be—again I go back, because we deal in so many modes. There has to be a sense among people who are using or abusing, substances that they may be found out—that a sure penalty will result.

There has been a knowledge among some users that they can get away with it because they will be protected through arbitration. There are other projections. I think the public, or most of us who are not sophisticated users, have a concept of what someone who is abusing alcohol may look like. We expect someone to stumble and fall down, be red-eyed and various other things.

Often this is not the case. That may be the case if it is the occasional person you were talking about, because if they are not used to using a substance they may show the effect to the casual observer more frequently or more readily.

In the Sullivan, IN, accident, based on my own experience chairing the hearing, the individual who was the operator of the train had apparently had a long standing alcohol habit. We interviewed people in bars he had frequented. I am told by the doctors that someone who is a habitual and heavy user of alcohol may not manifest that. They can function in a general way and may not exhibit the same thing we would expect of the stereotypical alcoholic.

Therefore it is very hard to detect. Everyone who had served with him seemed to indicate that, and I do not think it is a conspiracy of silence.

Senator DANFORTH. Let me ask you this. Right now, if you have a case of where somebody is either habitually drunk or frequently

drunk on the job, does it follow that the person will be fired by the railroad?

Ms. GOLDMAN. No.

Senator DANFORTH. And if we had regulations, Government regulations such as these, would it then follow that the person would lose his job?

Ms. GOLDMAN. The regulations I believe would help that, as I hear them, or at least would go toward that.

Senator DANFORTH. Is there any way that result can be advanced, for example, through licensing requirements where a person's license could be lifted?

Ms. GOLDMAN. Well, I would point out the Safety Board has not taken a position on that, but I think that is something we have all discussed that we are going to be taking a hard look at.

People who operate railroads are the only people who come to mind in public transit who do not have a license. A license is one way, in fact, to get at someone who is abusing the privilege of that license. There is nothing that a licensing agency can do—there is no body of Government that can go into the railroad at this point and say that person may be denied that privilege because—

Senator DANFORTH. But it is my understanding that under the present state of affairs, if a person is frequently drunk and that is known to the railroad, that does not necessarily lead to the person's dismissal.

Ms. GOLDMAN. I think many railroads sincerely try to invoke the rule, but as I pointed out, there are other things that get in the way of that.

Senator DANFORTH. Which are what?

Ms. GOLDMAN. Again, back to arbitration problems.

Senator DANFORTH. You mean it becomes a labor dispute.

Ms. GOLDMAN. It becomes a labor dispute. At least that is what the railroad people tell me when we interview them or talk to them.

Senator DANFORTH. The rule as proposed by the Secretary authorizes tests for drugs and alcohol in the case of just cause. It neither requires such tests, nor does it provide for spot checks.

Do you think that the rule should either require spot checks or that the rule should require anything?

Ms. GOLDMAN. I would not like to see us again wait until the accident happens and do it afterward. There may be some cases where someone is behaving erratically, and again, the danger is just as much there.

Senator DANFORTH. Right.

Well, I think that there are two ways to test beforehand. One is to do so in the case of just cause, that is, the supervisor says, "hey, that person is not acting the way a sober person would act, and therefore let's test." The other would be that just every so often, out of the blue, the test people show up and run the tests.

Ms. GOLDMAN. Well, it would seem to me if the person has another reason for, as you say, just cause, then the very testing without a problem would exonerate the person. There may be some other reason that their operation of the vehicle is fault.

Senator DANFORTH. Well, let me put it this way. Traffic police can operate two ways. One, they can look for cars that are weaving

and operating in a peculiar fashion, and then pull them over and run breath tests. They can do that.

Another thing they can do is they can do spot checks.

Ms. GOLDMAN. Well, the Safety Board has been advocating that in highway regularly, that we use the roadblock system that has been set up around here locally and in many states.

Senator DANFORTH. Would you advocate that in the case of railroad employees?

Ms. GOLDMAN. This again, I have to separate myself from the Board. I think individually it makes sense, and we will consider that as we go through the rule and make our comment as we are required to do.

Senator DANFORTH. Senator Stevens.

Senator STEVENS. Well, you handle several different modes.

Are there any significant differences in these proposals that would make you want to see them changed?

Ms. GOLDMAN. See the proposals for this changed versus—

Senator STEVENS. As compared to air and trucks and all others types of transportation.

Ms. GOLDMAN. What we would be happy is to see the kind of sternness that attaches to the other modes attached to the railroad industry.

Senator STEVENS. You do not think they are stiff enough.

Ms. GOLDMAN. There are none.

As you who have followed aviation very carefully, you know there has been a strict rule on alcohol. There is none on railroads. So we should have some of the same practices occurring in the railroad industry to protect against alcohol or drug abuse that we have in the other modes. We recognize that that is not going to be the cure-all. Obviously we have a large problem in the highway mode. We have been quite successful in the aviation mode in prohibiting the use of alcohol and drugs, or having that be a causal element, in commercial aviation. I would like to see the same rules apply to railroads that we have in the other industries.

Senator STEVENS. Do you have any specific comments concerning the proposals as they relate to the tests, the requirements for the tests?

Ms. GOLDMAN. No, because we need to—again I hate to beg off on that, with the timing of the release of these—to take a look at that. I would prefer that our staff take a look at that.

Senator STEVENS. Thank you very much.

Senator DANFORTH. Thank you.

Thank you very much, Ms. Goldman.

[The statement follows:]

STATEMENT OF PATRICIA A. GOLDMAN, MEMBER, NATIONAL TRANSPORTATION SAFETY BOARD

Good morning: I am here this morning for a single purpose: to express as clearly—and as urgently—as I can the Board's concern over drug and alcohol abuse in railroad operations.

The problem is real . . . and there are only a few signs of any really effective counterattack.

To put it another way, the threat of an alcohol or drug-impaired crew operating a train carrying hazardous materials is not simply some headline-grabbing scenario

that really should be relegated to that limbo of "not-likely-to-happen-disasters." Rather it is very much of a real-world possibility.

We at the Safety Board know this . . .

Railroad management knows this . . .

And so does railroad labor.

I do not believe, however, that the general public is fully alert to the threat. The person in the street seldom makes the connection that an alcohol or drug-impaired freight train crew can have a cataclysmic impact on his or her daily life. But believe me—it can—and does—and often in a most dramatic way.

Let me give you just one example of what I am talking about.

Livingston, Louisiana is a small town east of Baton Rouge. In the early morning hours of September 28, 1982, 43 cars of a Illinois Central Gulf train derailed. Most of the cars were filled with toxic or flammable materials, and 20 of them were either breached or punctured in the derailment.

The result? More than 200,000 gallons of toxic chemicals spilled onto the ground, triggering fires and explosions that destroyed or damaged 19 buildings, and sent two tank cars rocketing hundreds of feet through the air.

Miraculously, no one was killed, but 3,000 persons were forced to flee their homes, some for as long as two weeks, and the damage bill was estimated at more than \$14 million.

What caused the accident? The Board listed a series of factors including—the failure of a worn air hose that initiated an emergency brake application . . . the failure of the person at the train controls to respond properly to the brake application . . . and the placement of empty cars near the head of the train between heavily-loaded cars.

Now, let's turn to what the Board described as a "contributing factor" to the accident.

Our investigation showed that the engineer had consumed at least 14 to 16 ounces of 86-proof bourbon whisky during the 5½ hours preceding the accident. On that basis, his blood alcohol level at the time of the accident was approximately .19 percent—or nearly double what is considered to be legal intoxication in most states. As for the train brakeman, the Board believes he consumed at least nine ounces of liquor during the same period.

But there was still one other element in this formula for disaster. Before reporting for duty, the brakeman and engineer were joined at their motel by a railroad clerk. It was she who was operating the train at the time of the derailment.

Was the role of alcohol in the Livingston accident an uncommon factor? If we look at the record, the answer is "no."

Just last month, for example, the Board released its report on a rear-end collision between two freight trains near Sullivan, Indiana.

What was the cause of this accident? To put it very simply—the evidence indicates that the engineer and the brakeman probably were asleep in the cab as their train overtook another freight train and rammed it. The result: two persons were killed, and three others injured.

Why were the crewmen asleep? They apparently were suffering the effects of a long drinking session.

This is an accident in which I had a personal involvement as the Safety Board Member who chaired the public deposition proceedings in this investigation.

What we found was this: the engineer's blood alcohol level five hours after the accident was .27 which means at the time of the accident was .33—triple what is generally considered intoxication. The head brakeman, who was illegally operating the train, had a blood level of .11. A broken bottle of 80-proof vodka was found in the locomotive cab.

Just to give the Committee a clear concept of what we are dealing with, I would like to give you some of the details of the engineer's actions in the hours prior to coming on duty.

Our investigation showed that he attended a union meeting at 9:30 on the morning before the accident. When the meeting—which was held in a tavern—adjourned at 11:00 a.m., he had two glasses of 80-proof vodka and grapefruit juice. At noon, he left the tavern and went to another bar near the railroad yard where he had three more vodka and grapefruit juice drinks. By 3:00 p.m. he had moved to still another tavern where the bartender said he was served about six more drinks of vodka and grapefruit juice.

But the bartender said that when she noticed the engineer was becoming intoxicated after the first three drinks she cut back and served him only grapefruit juice with little or no vodka.

By 5:00 p.m., friends of the engineer had driven him home and by 5:30 p.m. he was in bed. By 9:30 p.m. he was up again after a call from the railroad asking him to operate a train. By 10:30 p.m. he had reported for duty.

What about the broken bottle of vodka found in the cab of the locomotive? The engineer said he had no knowledge of it—nor did the head brakeman.

Finally, I would like briefly to outline two more train accidents—which this week are the subject of a Safety Board public hearing in Denver.

One accident was a head-on collision April 13, 1984 between two Burlington Northern freight trains at Wiggins, Colorado. Five trainmen died in the accident and the damage was estimated at \$3 million.

The other accident occurred at Newcastle, Wyoming, April 22 when a Burlington Northern coal train struck the rear of a standing train, killing the conductor and the rear brakeman on the struck train.

The Board still is investigating each of these accidents, and there has been no determination of probable cause. But certain facts have been confirmed.

In the Wiggins accident, for example, an engineer and a fireman were found to have alcohol in their blood. In the Newcastle accident, one member of each of the three train crews involved in the accident had measurable traces of T-H-C—an element found in marijuana.

Are these isolated cases? Accidents that may be dramatic but really prove nothing?

I don't think so. Since June 1982, the Board has focused on the problem of alcohol and drug use in the rail industry. In that two-year period we have investigated nine accidents in which alcohol or drugs was either a contributing factor or a primary cause. Those same accidents claimed a total of 14 lives and the loss was estimated at more than \$26 million—not including legal or medical costs.

The alcohol problem in railroading was documented in a 1978 study prepared for the FRA which examined the drinking practices of 234,000 railroad workers on seven railroads.

The study showed that there were:

An estimated 175,000 drinking rule violations in 1978.

Five percent—or 11,000 workers—were "very drunk" at least once on reporting for duty.

Fifteen percent—or 35,000 workers—were a "little drunk" on reporting for duty.

And on any given day, it can be expected that there are 33 very drunk workers on the seven railroads included in the survey.

This in the face of a near universal railroad work rule—Rule G—that prohibits drinking on the job under the pain of dismissal.

Having recited this grim litany, the question I know this Committee is concerned with is—what can be done?

The Safety Board recognizes there is no cure-all . . . no instant panacea, but, we do feel that there are steps that can—and must be taken—to alleviate the threat to the public.

In brief, the following are recommendations which the Board made to the Federal Railroad Administration on March 7, 1983:

First, the FRA should immediately promulgate a specific regulation with appropriate penalties prohibiting the use of alcohol and drugs by employees for a specific period before reporting to duty and while on duty. This regulation could be patterned after the long-existent ban against alcohol and drugs used in aviation.

Second, the Board believes the FRA should require railroad management to improve supervision of train crew members to insure that alcohol or drug impaired employees are not allowed to operate railroad trains. To put it more simply, supervisory personnel should meet all rail crews as they go on duty—whenever that procedure is possible.

Third, there should be a requirement that timely toxicological tests be performed on all operating employees involved in a fatal accident, a passenger train accident, and any rail accident where there was an injury, a release of hazardous materials or substantial property damage.

Fourth, the FRA and the railroad industry should develop regulations that would require the full reporting of possible alcohol/drug involved accidents, including grade-crossing accidents. This type of detailed reporting would create a data base that could be used in developing effective safety countermeasures against the threat posed by drugs and alcohol.

While the FRA has not yet acted upon the recommendations, we understand that the agency is considering issuing a notice of proposed rulemaking.

We hope the rule will be forthcoming shortly. It is the Board's view that to be effective the rule must include—in some form—the recommendations I've cited.

In closing let me say this: The Safety Board realizes that for some of the Board's position on this issue is difficult to accept.

It would mean changes in the way things have been done in the railroad industry. It would mean greater restrictions for some . . . more effort on the part of others.

But these arguments do not supercede this fact: alcohol and drug use in the railroad industry is a loudly ticking time bomb.

Either we—the government and the railroad industry—must defuse it, or stand idly by waiting for what may be a preventable disaster.

The Safety Board has made its choice. We ask the railroad industry and the FRA to join us.

Thank you for this opportunity to speak. Now, I would be happy to answer any questions you may have.

Senator DANFORTH. Next we will have a railroad panel which will consist of Mr. William H. Dempsey, president of the Association of American Railroads; Mr. Joseph Neikirk, vice president, personnel and labor relations, Norfolk Southern Corp.; Mr. Darrell Sorenson, director of employee assistance program, Union Pacific & Missouri Railroads.

Mr. Dempsey, would you please begin?

STATEMENTS OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS; ACCOMPANIED BY A. W. JOHNSTON, VICE PRESIDENT, OPERATIONS AND MANAGEMENT; JOSEPH R. NEIKIRK, VICE PRESIDENT, PERSONNEL AND LABOR RELATIONS, NORFOLK SOUTHERN CORP.; AND DARRELL D. SORENSON, DIRECTOR OF EMPLOYEE ASSISTANT PROGRAM, UNION PACIFIC RAILROAD

Mr. DEMPSEY. Yes, thank you, Mr. Chairman.

I am accompanied also by Mr. William Johnson, who is our vice president of operations at the association, and who is more familiar with this subject in terms of hands on experience than I am.

I have a written statement that I would ask be included in the record, and I will simply take a minute or two to touch upon some of the highlights, particularly in relation to some of the things that have been said this morning.

We agree in the industry that alcohol and drug abuse is a serious problem. Whether it is more serious in the railroad industry than in other industries, we just do not know. We rather doubt it, but it does not matter because it is serious anyway. It is serious in terms of broken lives and broken families and loss of life and limb and huge amounts of property damage, so that it fully warrants the closest kind of attention and the use of every practicable means to correct it.

The railroad industry we think—nobody is perfect, and we are not either, but we think that our record in terms of what we are able to do has been very good indeed. Rule G is as strict a rule I think as anyone could devise, going to any possession and any use, no matter how small, of alcohol on the job or while the employee is subject to call. Every railroad has it, and every railroad of any size, to my knowledge, has an employee assistance program, and you will be hearing more about those programs from my associates this morning.

And in terms of enforcement, let me just say and I would ask my colleagues to comment further upon it, but it would be most aberrational, or most extraordinary, and something that I have never

heard of, for an employee caught demonstrably intoxicated, as you said several times, not to be dismissed.

It is true that the rule is so sweeping that you can have situations of very minor violations, possession of an unopened small bottle of alcohol that the fellow is taking home to a Christmas party or something of that sort, and he has not touched it, a railroad would be entitled under rule G to fire such a person. But I am sure we can all recognize that there are some circumstances that are extenuating.

But major violations, except for bypass agreements, are subject to dismissal, and people are dismissed. We have hundreds of dismissals every year in the industry under rule G.

But there are some things that we cannot do on our own, and that is why we welcome the initiative of the Department and the Federal Railroad Administration. For example, and I think most prominently, we cannot use intoxicilizers.

Senator DANFORTH. You cannot what?

Mr. DEMPSEY. We cannot use intoxicilizers or breathalizers. The Southern Pacific tried that. The union took them to arbitration. The arbitrator held, erroneously, I think, but I am not the arbitrator, held that under the Railway Labor Act, the use of breathalizers without the consent of the employee, or the union in a collective-bargaining agreement, was a violation of section 6 of the Railway Labor Act.

So there we are, we are handcuffed in that respect.

We wanted a somewhat broader right than the proposed regulations will give us. We wanted the right to test on a random basis, and we will have to look at this part of the regulation very carefully. However, on a swift perusal, the definition of probable cause does seem to be quite broad, and therefore while we would prefer a broader remedy, it might very well be that we will consider this to be suitable.

The other parts of the regulations we will look at with care. It does seem to me on a superficial glance that at least they are directed at the right targets. Whether they hit the bullseye in every case we will just wait, we will have to wait and see.

There is one area that we are going to have some difficulty with, and that is the bypass provision because there is a difference of view in the rail industry as to the desirability of bypass agreements. Some take the view that as the Department has, at least tentatively, that this is one of the best ways to flush out violations and violators, because of the reluctance of an employee to turn someone in if he knows that the penalty is going to be dismissal. Other railroads take the view that this detracts from the deterrent effect of the rule.

And as far as I personally am concerned, both of those views seem reasonable. One must choose between them, and we will have to see whether we can have an industry position on it or not.

Mr. Chairman, I think that concludes all that I need to say.

[The statement follows:]

STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads welcomes the opportunity to comment here today on the control of alcohol and drug abuse in railroad operations.

My name is William H. Dempsey. I am President of the Association of American Railroads, a trade association representing the nation's freight railroads. Our members operate approximately 94 percent of the nation's railroad mileage, haul approximately 98 percent of the nation's railroad traffic and employ 92 percent of the nation's railroad workers.

The nation's railroads are committed to the strong and effective enforcement of the existing prohibitions against the use of alcohol and drugs and the possibility of employees performing duties when under the influence of alcohol or drugs. Both management and labor have devoted substantial resources in attacking this issue internally within each railroad. Unfortunately, public perception of the railroads' success in enforcing its regulations is formed on the basis of highly publicized events. Public attention to the issue of drug and alcohol abuse enforcement is beneficial to the extent it motivates reasonable private and public opinion, but detrimental to the extent it creates the impression that nothing is being done or that railroads are lax in enforcing their rules.

The railroad industry is among the leading industries in combatting drug and alcohol abuse. The railroads do not contend they have cornered the market on wisdom on the subject, but they have been very progressive in the adoption of alcohol and drug abuse programs. They also have learned much in applying and adapting their programs. The commitment of the industry to eradicate the problem is deeply embedded and unshakeable.

While the safety record in the railroad industry is attributable to many factors—including capital improvements and track and equipment maintenance—well trained and efficient employees also contribute to that record. It is, therefore, noteworthy that the industry's safety record has been significantly improved. Train accidents, employee injuries and fatalities have been steadily decreasing in number and are at all time lows. The stable, efficient and sober railroad employees must take some credit for that record. It would be an egregious affront to the employees of the railroads not to recognize that the vast majority of them are responsible and productive employees.

Any system designed to eliminate or minimize the occurrence of antisocial behavior must contain a clear statement of the prohibition, an effective mechanism for detection of violations and a responsive enforcement program. A properly structured system augmented by education will do much to deter the undesirable acts.

Every major railroad and virtually all others with a work force of any significant size have clearly defined prohibitions against the consumption of alcohol or drugs while on duty or the performance of duty while under the influence of alcohol or drugs. The railroads also have adequate enforcement procedures for discipline for rule infractions. While the railroad detection efforts are generally adequate and effective, the railroads have been deprived of the use of some tools. It is in this area of drug and alcohol abuse detection that the railroads have requested the assistance of the Federal Railroad Administration.

I. Prohibition

For more than a century the railroads have included in their operating rules a prohibition against the use of alcohol while on duty or the performance of duty while under the influence of alcohol. These rules have been amended several times over the years and now also prohibit the use of drugs. The so-called Rule G's are clear and understood by the employees and constitute adequate and effective prohibitions.

The administration of the railroads' Rule G programs has not been hampered by the scope of the prohibitions contained in the respective Rule G's. However, to the extent individual programs can be improved, the AAR is committed to serve as a forum for the exchange of information and the dissemination of minimum criteria to be contained in such rules. The Operating Rules Committee of the Operations and Maintenance Department has served that function in the past and will continue to do so in the future.

II. Detection (Deterrence)

The problem of surveillance and detection is an extremely complex problem to which there are no complete and easy answers. While Rule G has a unique and special significance, it is but one of many operating rules which compel monitoring, ob-

servation, testing, and enforcement. Because of this, Rule G surveillance becomes both an integral part of supervisory observation and rule enforcement and a special concern which compels active cooperation by all railroad employees.

A. SUPERVISORY OBSERVATIONS

Railroad operations are conducted under mandates issued by the company which take the form of operating rules, timetables, special instructions, and general or special orders. These requirements are promulgated to provide safe and efficient movements of trains, locomotives and cars and are enforced by officers assigned to the operating units of the company.

The railroads provide instructions for employees and regularly conduct operational tests and efficiency inspections to observe employee performance. These tests are designed to ensure compliance with the operating rules including Rule G.

Other supervisory inspections are conducted by each railroad. Periodic inspections of train and engine employees, dispatchers, towermen, and others involved in the movement of trains are performed with special attention to the possible non-compliance with the rules prohibiting the use of alcohol and drugs.

Comments made by non-railroad sources would give the impression that supervisory observations are made only from 9:00 a.m. to 5:00 p.m. and only at major terminals. Nothing could be further from the truth. Line officers are required to make periodic and unannounced inspections of train crews. These line officers do not work eight-hour days, five days a week. They are responsible for operations twenty-four hours a day, seven days a week and they take that responsibility seriously or they are relieved of their responsibility. The unannounced inspections by those line officers occur at outlying crew change points and away-from-home terminals. As acknowledged by Chairman Burnett of the NTSB, a line officer cannot meet rail crews as they go on duty at all locations at all times. However, it is done on a more frequent basis than is implied by some commentators.

B. CO-WORKER REPORTING

Unfortunately, the term "conspiracy of silence" has been introduced to describe the natural reluctance of railroad employees to report fellow workers for Rule G violations. This reluctance is not a phenomenon peculiar to the railroad industry due to the nature of railroad rules or discipline. It is a social phenomenon which extends beyond the railroad industry. Implying that there is a sinister plot peculiar to the railroad industry does not contribute to an understanding of the situation and does not aid in developing solutions to the question of how to overcome the reluctance to report on fellow employees.

Railroads are currently experimenting with programs designed to overcome the reluctance of workers to report violations at the time of an incident. For example, "Rule G By-Pass Agreements" encourage co-worker reporting. By-pass agreements provide an incentive to co-workers to turn-in intoxicated fellow employees by assuring that the Rule G violator will not be terminated if he or she agrees to enter an employee drug-alcohol assistance program. This is a method which those railroads embracing the concept should be free to pursue. In addition, existing operating rules contain general provisions which require the reporting of rule violations. Furthermore, on trains the conductor and engineer are specifically responsible for safety of the train or engine and for observance and enforcement of the rules.

C. FRA SUPPORT OF ALCOHOL AND DRUG TESTING TECHNIQUES

The Association of American Railroads has gone on record requesting the Federal Railroad Administration to exercise its authority to assist the railroads in alcohol and drug abuse detection. By enabling railroads to use available detection devices the FRA would contribute not only to improved detection but to the most effective deterrence to drug and alcohol use by employees.

In resolving a recent dispute, the National Railroad Adjustment Board found that the existing collective bargaining agreement did not allow a carrier to make random breath tests. In this respect, most or all labor agreements are similarly constructed. This ruling effectively proscribes railroads from implementing such random breath checks in the absence of an agreement with rail labor.

The AAR requested that the FRA specifically find that, notwithstanding any provision of any collectively bargained agreement to the contrary, each employee subject to the Hours-of-Service Act, as a condition of employment or continued employment, is deemed to have consented to the administration of chemical, toxicological or other tests for the presence of alcohol or drugs in the employee's system. The

railroads should not be restricted to the use of breath analysis tests or other currently used testing devices. The rule should be flexible enough to implement new testing devices or procedures as they are developed and recognized.

Breath analysis tests are not personally intrusive. Use of breath analysis tests by law enforcement agencies is widely accepted. Such use in detecting and deterring alcohol abuse on the public highways does not offend the average person's sense of fairness and reasonableness, nor is there an outcry against such public use as being an unreasonable invasion of the motorist's right to privacy. In the case of railroad employees engaged in duties directly affecting public safety, the issue is not an abstract matter of the right to privacy—it is a question of public safety. Railroad employees do not have a right to privacy which rises above public interest in safety.

The railroads should be free to use testing devices on a selective basis. A railroad should have the ability to expend its resources in an efficient manner and thus pinpoint specific problem locations on an unannounced spot basis. Unless the railroad has the ability to set the criteria for use of such devices it may be deprived of the ability to use the devices in a manner which effectively deters Rule G violations.

I note that the breath analysis tests and similar tests would be used supplemental to existing methods of enforcing Rule G. The traditional methods of determining Rule G violations—incoherent speech, slurring, unsteady gait, smell of alcohol, etc.—will still be relied upon and serve as the basis for disciplinary action for Rule G violations.

In addition to using available testing devices on a random basis, the railroads should be free to use them in post-accident investigations. However, in this regard it should be noted that post-accident testing does not serve as a very effective deterrent. In the minds of most employees, the chance of an accident is such a remote possibility that a policy of post-accident testing would not weigh very heavily in the decision to consume alcohol or drugs. If the possibility of an accident doesn't deter the consumption of alcohol, it is most unlikely that the existence of a policy of post-accident testing would serve as a deterrent.

III. Enforcement

Enforcement of Rule G through disciplinary action has been the keystone to deterrence of alcohol and drug abuse. The ultimate sanction—removal from service—is fully justified for infractions of Rule G and is imposed by most of the railroads in the country as their basic enforcement policy. While still retaining the "out-of-service" sanction for blatant violations of Rule G, many railroads are currently experimenting with "by-pass agreements" in an attempt to encourage co-worker reporting of fellow workers with drug or alcohol problems.

Railroads with divergent approaches to Rule G discipline come to their views on the basis of equally acceptable reasons. The railroad with the traditional approach to Rule G enforcement argues that its strict enforcement has a deterrent effect which should not be diluted. These railroads suggest that Rule G by-pass agreements create the perception among employees that the agreements constitute an institutional recognition that Rule G will not be strictly enforced. It is difficult to find fault with this approach.

The railroads which are experimenting with Rule G by-pass agreements view the advantage of such agreements as encouraging fellow employees to identify those with drinking problems so that they may receive counseling and treatment. It is difficult also to find fault with this approach.

However, in comparing the actual operation of disciplinary action by railroads with and those without by-pass agreements, the similarities stand out more clearly than the differences. To be sure, on railroads without a by-pass program, if it is determined that an employee violated Rule G, he is dismissed. But on practically all railroads a policy is in force to provide help or assistance in obtaining help for employees found to have an alcohol or drug problem which, if corrected, may lead to reinstatement. In such situations, there is a minimum time out of service before any consideration is given to permitting reinstatement of an employee. The employee is referred to railroad counselors regardless of whether the individual is a so-called "problem drinker" or a "non-problem drinker." Before any consideration is given to reinstatement, the railroad counselor and Medical Officer must be convinced that the individual is abstaining from the use of alcohol and or drugs. Determination of how long an employee should remain out of service is based on a number of considerations, including such matters as whether individual is a "problem drinker." And, finally, a second Rule G offense results in permanent dismissal even on railroads with a by-pass agreement.

CONCLUSION

The nation's railroads have exhibited a continuing concern with the problem of alcohol and drug use by their employees. Unfortunately, they have been given too little credit for the effective enforcement of their rules while isolated incidents and anecdotal newspaper reports are accepted as accurate portrayals of alcohol and drug abuse in the industry. The railroads and their employees deserve better than that.

The railroads have effective rules prohibiting the use of drugs and alcohol and have demonstrated the ability to take appropriate disciplinary actions. Railroads have been in the forefront of American industry in scrutinizing the problems of alcohol and drug abuse and are willingly experimenting with different ways of dealing with those problems.

Importantly, the Federal Railroad Administration can, and we are hopeful will, help us by enabling the railroads to use the same detection devices that law enforcement agencies use in their programs to keep our highways safe. By strengthening the railroads' surveillance and detection capabilities we will have taken a giant step toward the best solution—deterrence.

Senator DANFORTH. Thank you, Mr. Dempsey.

Mr. Neikirk?

Mr. NEIKIRK. Thank you, Mr. Chairman.

My name is Joseph R. Neikirk, and I am vice president, personnel and labor relations of the Norfolk Southern Corp., with headquarters in Norfolk, VA.

Norfolk & Western Railway Co. and Southern Railway Co. are wholly owned subsidiaries of Norfolk Southern. I have held my position since November 1982. Before that, I was vice president, corporate development of Norfolk Southern, and had been vice president, labor relations and vice president, administration of Norfolk & Western Railway Co. During the first 19 years of my employment, I worked in the operating department of the Norfolk & Western, except for 4 years, 1970-74, on the old Erie-Lackawanna Railway Co., which was a subsidiary of Norfolk & Western. My operating jobs included general manager and superintendent.

As is apparent from the job title, my responsibilities include personnel administration and labor relations. In addition, the medical directors of Norfolk & Western and Southern Railway report to me, and I am responsible for the alcohol rehabilitation service [ARS] program in effect on all three properties.

Prior to the consolidation in June 1982, of N&W and Southern under the ownership and control of Norfolk Southern, N&W and Southern Railway had differently structured alcohol rehabilitation programs. After thorough consideration, this past April a common alcohol and drug rehabilitation program was put into effect for all NS companies. The ARS program now in effect on all Norfolk Southern companies is similar to what has been in effect on Norfolk & Western since December 1973. We structured the new program according to what appears to us likely to work best on all of the properties concerned. The establishment of the ARS program on Southern and Norfolk Southern had the full cooperation of the labor unions who represent our employees as it did on Norfolk & Western. We feel that the success of an alcohol and drug rehabilitation program depends heavily on the cooperation of labor.

The new ARS program is described in an attached letter which I have submitted dated April 4, 1984, from President Harold H. Hall to department heads of Norfolk Southern and its subsidiaries. As can be seen, the program is simple, direct, and to the point. What is more important, it works.

Nearly 11 years experience on the Norfolk & Western, confirmed by our limited experience so far on Southern Railway and Norfolk Southern, demonstrates that the ARS program in no manner compromises the effectiveness of the very strict and effective discipline programs for violation of rule G—prohibiting employee use of alcohol or drugs while on duty—maintained by NW and SR. We view a rule G violation as a very grave offense and give highest priority to enforcing that rule, to protect our employees, the public, and our property.

The premise on which the ARS program rests is our view that alcoholism is an illness and that the alcoholic drinks because he cannot help it. That is why employees who are not alcoholics but who are detected violating rule G are disciplined and are not eligible for treatment in and reinstatement under the ARS program.

We feel that, if anything, the ARS program has improved the effectiveness of our discipline program and enhanced the degree of control we exercise over the safe operation of our railroads. It is difficult to quantify at all, much less with any degree of precision, the effectiveness of the ARS program and of the application of discipline on Norfolk & Western and Southern. However, in recent years there have been no accidents on either Norfolk & Western or Southern caused by the use of alcohol or drugs by railroad employees. And these statistics on the Norfolk & Western program are indicative:

As of December 31, 1983, on the Norfolk & Western, there were 804 employees in the alcoholic rehabilitation services program, plus 11 family members. Since the program was instituted, 271 employees who were detected in violation of rule G have been restored to service. Only 18 of these employees have "slipped", that is, had a second dismissal for rule G violation. Further, of the 271 employees restored to service, 37 have been totally abstinent for 5 years or more. A number of them have become valuable resource people who have participated in the rehabilitation of 128 other employees. Please note that under the rules of the program, an employee is entitled to only one slip, although a few employees have been restored to service after a second slip on the basis of lenience extended by supervision.

We have been deeply concerned over the loss of valuable and experienced employees to the ravages of alcoholism and drug abuse. We feel that the ARS program not only serves our interest in promoting safety of operation, but it is a humane way to handle problems caused employees by their illness. In line with this, we have attempted to preserve the anonymity of participants in the program to the extent possible. Incidentally, we feel that the only effective treatment, and it is the only treatment used in our program, is total abstinence from the use of drugs or alcohol.

Our ARS program uses former addicts to alcohol or drugs whose illness is in remission, people who have worked on the railroad and understand what the work is all about. They have an insight into and empathy with the problems of other employees troubled by drug or alcohol use, but are not deceived by addicts' lies that are a part of the disease. Indeed, the only nonalcoholic ARS staff member is the director, Mr. J.R. "Pete" Williams, a former general

chairman of the United Transportation Union. Recovering alcoholics are also used as resource people in the program.

We feel that our voluntary ARS program now in place on our property has worked well for us. We ask that Congress not enact any legislation that will impede our ability to continue to keep our ARS program at its existing level of effectiveness or better. Similarly, we hope that the rules to be promulgated by the Federal Railroad Administration about alcohol and drug use by railroad employees will not interfere with our ARS program. We appreciate the opportunity to be heard by this committee and to tell you about our ARS program. We participated in the FRA's hearing in its drug and alcohol abuse rulemaking investigation, and we are cooperating with the General Accounting Office in its current study of use of alcohol and drugs by railroad employees.

Our program is effective because it is carried out by people who understand what the employees in the program are going through. They have been down the road themselves. Our program involves the families of employees. It relies on proven resources such as Alcoholics Anonymous and Al-Anon. In my experience, those most enthusiastic about our program are those who have been helped by it, employees and their families.

Next Saturday night at Canton, OH, I will attend the Annual Alcohol Rehabilitation Service Family Jubilee in which more than 300 recovering alcoholics and their families, employees of Norfolk & Western and Southern, will participate. Those people will be quick to tell that the program has made an enormous difference in their lives. For many it has been literally a lifesaver.

Thank you very much for your attention. We will be happy to try to supply for the record any further information that may be helpful.

[The letter follows:]

NORFOLK, VA, April 4, 1984.

Pursuant to the Norfolk Southern Alcoholic Rehabilitation Services (ARS) program, effective April 1, 1984, the following procedures will govern in the handling of employees dismissed for violation of Rule "G" where applicable, or for incidents involving alcohol or drugs:

1. The department heads shall immediately furnish the name, occupation, division, date of dismissal and last known address of each employee who has been dismissed for violation of Rule "G" to: J.R. Williams, Chief Administrator, Alcoholic Rehabilitation Services, P.O. Box 459, Kenbridge, VA. 23944.

(a) The chief administrator will investigate the matter and then advise the department head whether the dismissed employee is "Without Addiction" (a good risk for reemployment insofar as sobriety is concerned), or whether he is an "Addicted" (alcoholic) person and requires rehabilitation.

(b) The department head, upon receipt of such information will consider the "Without addiction" individual strictly as a discipline case. If the dismissed employee is an "Addicted" person, the department head shall advise the chief administrator whether or not a claim has been entered by or in behalf of the dismissed employee relative to his dismissal.

(c) If such a claim is subsequently filed by the dismissed employee or his/her representative, the employing officer will immediately advise the chief administrator, who shall take steps to secure waiver of the employee's claim.

(d) The ARS program will have no authority to reinstate an employee who does not waive and withdraw his/her claim relative to his/her dismissal.

2. After a dismissed employee who has participated in the ARS program has been found "rehabilitated," the chief administrator will so advise the department head, who will immediately return that individual to service, subject to the usual physical examination.

3. When the dismissed employee is a supervisor or excepted employee, the reinstatement may or may not be to the same position he or she occupied at the time of his/her dismissal, subject to the needs of the railroad.

4. When a dismissed employee has been returned to service after a period of rehabilitation, his/her supervisor should make every effort carefully to monitor his/her performance. If there is any indication that the employee is slipping from sobriety, the individual should be confronted promptly and again referred to his/her counselor before the situation deteriorates to the point of another dismissal.

5. Rehabilitated employees restored to service pursuant to this policy and who are again dismissed for violation of Rule "G" are eligible for all aspects of ARS except reinstatement. Therefore, the disposition of repeat offenders must depend upon the decision of their supervisors or, where applicable, the outcome of the Railway Labor Act grievance procedure.

6. Whether an employee is an alcoholic or a participant in the ARS program should not be considered by his/her supervisor when that employee is charged with or investigated for an alcohol or drug use offense. Appropriate instructions should immediately be issued to this effect.

7. When dealing with a troubled employee, it is not sufficient that a supervisor call an ARS counsellor and report a possible alcoholic. The supervisor personally must confront the employee in question with documentation of his/her poor work performance record, refer him or her to ARS for help and advice, and then check with ARS to see if the employee has in fact returned there for assistance.

8. Understanding and cooperative supervision are absolutely essential to the success of any employee assistance project. Therefore, a requirement of knowledge of and compliance with the ARS program will become part of every supervisor's job responsibilities.

HAROLD H. HALL.

Senator DANFORTH. Thank you, sir.

Mr. Sorenson.

Mr. SORENSON. Mr. Chairman, my name is Darrell Sorenson. I am director of the Employee Assistance Program for the Union Pacific system, which is comprised of the Union Pacific Railroad and the Missouri Pacific Railroad.

Some 12 years ago, labor and management in the Union Pacific Railroad became aware that industry in general was suffering great financial and human loss as a result of the abuse of alcohol. Labor and management on the Union Pacific Railroad also recognized that we shared in these financial and human costs.

In 1972 we implemented an Employee Assistance Program that covered the entire Union Pacific Railroad system. It was but a short time after implementation that we discovered that there were people who also suffered from the abuse of alcohol, drug addiction, emotional problems, marital problems, and a variety of other kinds of problems, so we expanded our program to cover all personal problems that will impact the well-being and job performance of our employees.

Since our merger with the Missouri Pacific Railroad, we have expanded our staff to 21 people, and we provide Employee Assistance Program services to over 42,000 employees. Our program has developed an excellent reputation with labor and management and with the majority of our employees. We have been able to provide service to over 4,300 employees and over 3,600 family members. Our success ratio on all cases based on the ability to return to service and work safely is in excess of 80 percent.

Most recently, we have begun to work very closely with the Brotherhood of Locomotive Engineers and the United Transportation Union to develop what we call a prevention program. This got its start at the Union Pacific on the Oregon division. The object of

the prevention program is to reduce the incidence of use of alcohol or drugs on the job or reporting to work under the influence through peer intervention. The peer intervention concept and the development of the prevention program promoted through Operation Red Block originated with the Brotherhood of Locomotive Engineers General Chairman Jim Dayton and the United Transportation Union General Chairman Lavon Nelson on the Oregon division. The Union Pacific Railroad reimbursed local officers who met with our staff to discuss the issues of the use of alcohol and drugs on the job, and to further implement a working plan to create a change in the attitude in the work environment.

This goal is to encourage nonusers to put their brothers on notice that they will no longer tolerate the use of alcohol or drugs in their presence. The program was designed by these local people as follows:

Step one, they developed a policy statement that was sent to the homes of their members. Local organizations confirmed through policy statements to members that they endorse the international position, and that is, we do not condone the use of alcohol or drugs while on duty.

The second step that the committees took was setting up their own prevention committees made up of volunteers of their members. Participating locals formed prevention committees to field complaints about members using drugs or alcohol while on duty. Committees insist that the users quit and urge them to contact an Employee Assistance Program if they need help.

The third step that these committees picked up on was rule G bypass agreements. Locals ratified a rule G bypass agreement that allows members to confront other members who use drugs or alcohol while on duty and refer them to the Employee Assistance Program for counseling, all without loss of job, threat of punitive action, or marring their personnel records. This bypass around normal rule G discipline is afforded only one time in a career.

Step four is a companion agreement that the company offers. Once local operating crafts have distributed their policy statements, established their prevention committees and ratified the bypass agreement, the Union Pacific system places in effect a rule G companion agreement. This makes it possible for an employee without a previous rule G violation to return to work during a 12-month probationary period provided that the employee participates in the employee assistance rehab or education program, depending on the need.

Step five is Operation Red Block. Concurrent with steps one through four, the BLE and UTU sponsor an information and awareness program called Operation Red Block. This is the campaign promoting the prevention program, the first four steps.

We are now in the development stages of a pilot program on the eastern district of the Union Pacific Railroad on this Operation Redblock. This covers the States of Nebraska, Kansas, Colorado, and Wyoming. The UTU and the BLE locals have now formed 25 committees in this four-State area. These committees are very active and have already begun to develop plans for local promotions to bring attention to their efforts within the railroad system to recruit supporters and, in addition, are developing community

projects that will enlist the support of railroad family members and members of the community at large. We plan to expand this program throughout the Union Pacific Railroad over the next few months.

We have been advised that the Brotherhood of Railway and Airline Clerks is interested in joining this effort. Operation Red Block will then enjoy support from three of the largest unions in the railroad industry from the international to the local levels. We will be setting up a pilot program on the Missouri Pacific Railroad over the next 2 months.

The overwhelming support from labor union members has exceeded our expectations. The Union Pacific system has fully endorsed labor's efforts and has served as a facilitator and financier for their efforts.

I believe this program is working well and has been a major factor in curtailing drug and alcohol use on the Union Pacific so far.

Thank you.

Senator DANFORTH. Thank you very much, Mr. Sorenson.

Gentlemen, thank you.

This is short notice for you to be asked to comment on the Secretary's proposal. But you at least heard Secretary Dole this morning, and maybe you have had an opportunity to see the proposal.

Do you have a view of it?

Mr. DEMPSEY. Well, I do not know that I can say much more than I said. Perhaps my colleagues can add to it.

The various areas that are encompassed by the regulations, the principal areas, as I say, seem to me to be quite legitimate targets for FRA to aim for. As I said before, we think the breathalyzer provision of the regulation is central.

Senator DANFORTH. Is what?

Mr. DEMPSEY. Is central. Some other parts of it simply duplicate what we already have, for example. We will now have a Federal rule G, but we have had an industry rule G for many, many decades, and when—and I think the Secretary is right, when we detect, we take action.

Senator DANFORTH. Is that correct? I take it you view the Livingston, LA situation as being something that is just an oddity.

Mr. DEMPSEY. I do not know enough about the facts of that case, Mr. Chairman, to comment on it. If it were a case in which there were repeated violations of rule G and dismissals and rehiring, that would certainly be aberrational, but I gathered from what Mrs. Goldman said with respect to arbitration being a part of this story, that it may be that one of the two dismissals was set aside by an arbitrator. If that is the case, then I would simply have to assume that the arbitrator knew what he or she was doing, and that the railroad did not have an adequate basis for that first dismissal.

But as I say, I am just speculating. I really do not know what the facts are.

Senator DANFORTH. Let me ask you: As the general rule, if you know somebody has been drinking, is that person discharged?

Mr. DEMPSEY. Let me ask my associates and Mr. Johnston to comment on that because they have hands-on experience.

Senator DANFORTH. Well, let me ask you to speak not just from the standpoint of your own railroads because I think both of your railroads do a good job in this area, and I certainly do not want you to be in a position of saying anything to the contrary.

But what is your general impression, if you have one, about the industry? If people are known to have been drinking on the job, are they as a matter of course discharged, or are there some reasons why they are not, such as because of labor relations or because it is very hard to make a case sometimes?

Mr. NEIKIRK. Mr. Chairman, speaking for my own companies, any employee who is detected in violation of rule G, drinking on the job or working under the influence, is dismissed. Through the program that I have described there is a way back.

Senator DANFORTH. The general rule is dismissal, and there is no problem in enforcing that?

Mr. NEIKIRK. Yes.

Senator DANFORTH. How about other railroads?

Mr. NEIKIRK. I cannot speak for them, but I can assure you that on these two properties they are dismissed.

Mr. DEMPSEY. Mr. Johnston, I think, can speak with some authority on that due to his industrywide position.

Mr. JOHNSTON. Yes, Senator. And Mr. Neikirk's statement is applicable to the industry as a whole.

Senator DANFORTH. Would the just cause provision be used?

Mr. DEMPSEY. Which one is this, sir?

Senator DANFORTH. One part of the proposed rule authorizes railroads to test either urine or breath for drugs or alcohol.

Mr. DEMPSEY. Absolutely. There is no question that it would be used.

Senator DANFORTH. It would be used? Even if it was not required, it would be used?

Mr. DEMPSEY. Yes. This is something the industry has wanted for a long time. And as I said before, we simply have been blocked by arbitration awards. So we have asked for this, petitioned for it. And as Mr. Riley said—I do not know if those were his words—but we have slaved over it.

Senator DANFORTH. Mr. Sorenson, do you have anything to add?

Mr. SORENSON. No, I don't. From our experience on the Union Pacific system at least, if they are caught, they are fired.

Senator DANFORTH. It is what?

Mr. SORENSON. If they are caught, they are fired. I think detection is the problem.

Mr. JOHNSTON. After, of course, a fair and impartial hearing.

Mr. SORENSON. Yes.

Senator DANFORTH. You do not think licensing requirements would add anything in particular?

Mr. DEMPSEY. I do not, Mr. Chairman.

Senator DANFORTH. You feel the railroads would enforce the situation if they had the means to detect the problem?

Mr. DEMPSEY. Yes. However, I need to add—and I did not mean to give an erroneous impression—this is a matter of deep interest to the unions, and there are questions of fairness involved in the use of these detection devices. So I perfectly well understand the

union's reluctance to have the railroads have an unfettered right to use breathalyzers.

Senator DANFORTH. "Unfettered" meaning spot checks?

Mr. DEMPSEY. Spot checks or random checks. The fear, for example, being that a supervisor might take it out on somebody that he doesn't like for one reason or another.

We have taken the position that if that happens—and we are not denying that it could happen—that the existing grievance machinery is adequate to safeguard against it, and that the public interest in the whole matter is sufficiently grave so that random checks, even at some risk, would be warranted.

As I say, the unions have a responsible and not an irrational position in this matter. We are anxious to work with them so that whatever comes out of this is something that they can live with and that we can live with and that will be administered in a fair way.

Senator DANFORTH. Gentlemen, thank you very much for your participation in this hearing.

Next we will have a labor panel consisting of Mr. Fred Hardin of the United Transportation Union and Mr. John Woischke of the Brotherhood of Locomotive Engineers.

[Pause.]

Mr. Hardin, would you like to start?

STATEMENTS OF FRED A. HARDIN, PRESIDENT, UNITED TRANSPORTATION UNION; AND JOHN T. WOISCHKE, LEGISLATIVE LIAISON, BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Mr. HARDIN. Yes, sir.

Mr. Chairman, my name is Fred A. Hardin. I am president of the United Transportation Union. I am also chairman of all the railway unions, and I certainly appreciate the opportunity to come here today and to be heard and to hear the testimony before your honorable committee.

I would like to say at the outset that the Secretary of Transportation, Mrs. Dole, has been very, very interested in this problem. We have met with her many times. She does have a sincere interest. I think John Riley, the Federal Railroad Administrator, has been very, very active in it. He has shown a great interest. And we appreciate and certainly believe in them, that they are trying to come up with something reasonable.

Knowing your background, it appears to me that you and I are the only two people who do not drink.

Senator DANFORTH. Well, listen, they use to say about the Episcopal clergy that if there were three or four gathered together, you would usually find a fifth.

Mr. HARDIN. Well, I want to say in all candor that it is a serious problem. There is no doubt about it. We as representatives of the employees have a sincere desire to do something about it, but we do not want to be hurried into something that is discriminatory and unfair.

The spokesman for the National Transportation Safety Board has made a couple of statements that I would like to review in a few minutes, and I would have to say, in all honesty, that I think

the DOT and John Riley and the FRA have shown a different kind of interest than has the National Transportation Safety Board.

I say this sincerely. We have had two bad accidents out in Colorado and Wyoming. It seems to me that the NTSB is more interested in publicity and rushing out and giving press releases and accusing people of being drunk before the facts were actually at hand.

I would also like to point out the fact that the word "safety" is involved in NTSB, and I know we are here today to talk about alcohol and drugs. It is a serious thing, and we are perfectly willing to do everything we can to alleviate it or circumvent it or do away with it.

But just as an example, in the two serious accidents out West in Colorado and Wyoming, here we have a railroad operating two trains. In one of the accidents two trains ran head-on. One of the most important things is the train dispatcher. He is located maybe 100 miles away, but he operates all the switches. He puts one train into a siding and lets the other one go by without moving. It is a very, very responsible position.

But in this particular instance, he has a huge tape that records every conversation between him and a train crew or between two train crews. It is a master tape. Quite ironically, during about the 1-hour period when this accident occurred, the tape is erased. I do not know whether they had a Rose Marie out there or not, but the tape is blank for that period of time.

Now, during the in-house investigation, the spokesman for NSTB stated that the tape had been subpoenaed by NTSB and brought to Washington to try to make it audible, you know, to really find out if there were some other factors involved in this accident. But yesterday the same man testified. They are having a hearing out there. Mr. Burnette is in competition with you. He is having one out there, and you are having one here, and I decided to come to yours.

But at any rate, yesterday the same man testified that the tape had not been sent to Washington. Now, here is a man testifying a week apart. He said it is still in the railroad's hands, and they will not give it to him. So I am just pointing this out. There are other factors involved such as fatigue and overwork.

We have records of people on the Burlington Northern Railroad having to work 20 to 25 days straight, working on 8-hour call, and oftentimes violating the law by being required to work without proper rest.

Now, we are not pointing this out to you to excuse the use of alcohol or drugs, because we are not going to make an excuse for that. We are going to try to help you correct it. But there are other factors that certainly have great significance other than just use of alcohol and drugs.

Now, we heard the Secretary talk about one railroad which had a great record in rehabilitating people, and I know that is true. And I would just like to point out to you that we have been working for 12 years. We spent a lot of money trying to get the railroads interested in these programs, and I am going to answer your questions.

They are not programs that will eliminate discipline. They are not programs that will give a man a chance to say I want to help

myself after he has done something wrong. They are not geared up for that.

But on the railroad that the honorable Secretary mentioned, 12 years ago I went to the ranking officer of that railroad, and I explained to him about such a program and asked him to become interested in it. He said he was very interested in it, but he would have to vote his 12 top officers on that railroad, because it was a cooperative operational railroad.

A week later he called me and he said well, Fred, my 12 top officers voted 6 to 6. Well, I was wondering what his decision was going to be, and I said what does that mean to you? He said it means I have six drunk officers who do not want to be exposed. So that is the type of opposition we have had in this program that we have tried to institute and put into effect on the railroads.

Now, on the Norfolk & Western and on the UP, we have excellent programs that are working fine. They are not inaugurated or instituted to show—to give a man an excuse whatsoever to drink on the job. We do not want people drinking, because 87 percent—now, these figures of 13 percent of the people showing up drunk, I do not think they are accurate, because we have not lost 13 percent due to dismissals. And when a man shows up drunk on an American railroad, he very seldom gets a chance.

Now, there was testimony given here today by the spokesman for the National Transportation Safety Board which said that one of the problems was rule G cases became labor disputes. That is absolutely incorrect. We do have, under the Railway Labor Act and under the doctrine of our constitution, a right to appeal.

We have dozens of cases in the railroad industry every year where people are proven to be under the influence of alcohol or in violation of rule G or drugs, and they are dismissed. But we also have numerous cases where, as Mr. Dempsey mentioned, there might be harassment, it might be just dislike, where a man is accused of rule G, and he is innocent. And we ultimately take it to an arbitrator or a neutral appointed by the Federal Government who decides that they didn't prove the case, and as you say, in automobile cases. But that is not a labor dispute. That is a man's inalienable right to seek justice. And we would point that out to you. There's no tradeoff of wages or rules or anything for rule G cases, because as a union we do not owe a man who reports to work habitually drunk. We do not owe him anything. We think when we have put in rehabilitation programs, we have paid our debt to him. And if he is going to come out there and endanger our other members, we do not want him working there. And we do not have any problem with that.

Now, the spokesman mentioned roadblocks. Well, a roadblock may be fine. I wish we had them because we get 55 people killed every night on the highway. And if we had roadblocks and pick out the drunk drivers, it might help. But in a railroad operation, stopping a 14,000-18,000-ton train on the side of a mountain for a road test, that would not work.

Now, the proposed regulations, we knew that something was coming because there had been too much publicity and there is too much tragedy in what has happened in the last 6 months. Now, 1983 was the safest year the railroads had had. It has been steadily

increasing in safety factors since 1978. And 1983 was a great year, but in 1984 we have had two or three tragedies. But these regulations, we are going to take exception to part of it, and I do not mind that. We are perfectly willing to cooperate in anything that will make the railroad a safe environment and a safe place for our sober employees. Certainly we are in favor of that. But the testing which has been talked about here, we want some backbone put into that. We want some strength put in, either by DOT, FRA or what-not, to eliminate harassment.

Just if a man—you would be surprised how some minor railroad officials might take a dislike to a man because he filed a time claim or what not and harass him when—any experienced railroad officer knows, just like anybody in any industry knows, you know who the drinkers are. You see them every day. You know who the people are that drink while on duty. And we do not want people harassed.

Now, just to walk up and give a man a balloon in a bottle and tell him to go do his thing, that is harassment. But if they have probable reasonable cause, we do not find any fault with it.

But we have another unique and extenuating thing in the railroad industry, and that is this: Now, NTSB has been yelling about cannot drink the 8 hours before going on duty. I have told the railroad presidents I would gladly agree to that, but they will not agree to it, and I will tell you why.

We have thousands and thousands of people who are assigned to work Monday through Saturday. I am just using this for an example. It might be any number of days.

Senator DANFORTH. I am going to have to ask you to wind up your testimony, if you would.

Mr. HARDIN. OK. But those people may be called on Sunday morning when they are not scheduled to work until Monday. And we have got a right to say I cannot go out; I had three drinks. Under the present rule they would be fired for not protecting the assignment.

So I appreciate the opportunity of being here to answer any questions. And we will cooperate, but we want justice. That is all I can say.

[The statement follows:]

STATEMENT OF FRED A. HARDIN, PRESIDENT, UNITED TRANSPORTATION UNION

The United Transportation Union, under the provisions of the Railway Labor Act, represents the great majority of the operating employees of American and Canadian railroads, and, accordingly, is a party of great and sincere interest in these hearings.

It is our understanding that these hearings are to review and decide if the use of alcohol and/or drugs have been the primary cause of any railroad train accident.

We are vitally interested in that provision of Federal Law which requires the carriers to provide a safe environment in which our employees are required to carry out their assigned duties. As a union representing employees, we are equally concerned about their safety as it is our members, friends and co-workers who are injured when an accident does take place regardless of the cause. If use of alcohol or drugs by employees while operating trains or engines is prevalent, then certainly we want to do everything reasonable to eliminate such hazards.

In fact, we have been trying for more than 10 years to get the American railroads interested in a realistic rehabilitation program for any employee who realizes that he or she has a problem with alcohol or drugs. We have recognized the indisputable fact that 17% of all Americans have an alcohol or drug problem and approximately 12% have a problem so severe that their lives and careers have become unmanage-

able. These figures hold true in every career, industry and strata of society, and, in fact, our survey shows that railroad employees drink less than employees in other industries because of the fact that they work irregular hours and are subject to call on duty at almost any time.

As far as fatalities or major accidents are concerned, the railroad industry had the safest and best year ever in 1983, but there is no doubt that we have had two serious train wrecks with seven fatalities in 1984 and this union will greatly cooperate in any reasonable and responsible manner to eliminate any possible causes for future accidents.

We feel constrained to point out, however, that the union does not hire the employees nor does it have any participation in the railroads' individual programs to operate their trains in a safe and responsible manner. Two serious train accidents involving fatalities occurred on the Burlington Northern and a spokesman for the Burlington Northern stated that they would attempt to get the union to cooperate in a rehabilitation program for the employees. The truth of the matter is that this union has been sincerely trying to get the railroads to enter into a sincere program for more than 10 years. There are other mitigating factors in the Burlington Northern operation that need ventilating and correcting or else there will be other wrecks and additional fatalities. Although we believe that the railroad industry has done more to recognize this national problem than any other industry, many of the railroads have entered into token programs that can not be successful. It is a recognized fact that an employee with an alcohol or drug problem can be rehabilitated far cheaper than he or she can be fired and replaced with a capable and experienced employee. A good example of philosophical differences between different railroads is shown in the Norfolk and Western Railroad recently merged with the Southern Railway. It is a recognized fact that the Norfolk and Western has rehabilitated more than 800 employees in ten years that have voluntarily admitted that they had a problem and rehabilitated themselves with the cooperation of the carrier.

The Southern Railroad System has never had such a program, but, instead, felt it more reasonable and prudent to dismiss employees who had such problems.

The Federal Government receives hundreds of millions of dollars in taxes on alcoholic drinks and many States actually own and operate the stores which sell liquor to the public. A reasonable part of these revenues should be set aside to help cure the problems that the profits have caused upon the customers of the State and Federal Government sales.

In conclusion, this union will be represented at these hearings and respectfully requests that additional oral testimony be allowed and that it be given consideration and participation in any suggested alleviation or remedy of the problem.

There is no doubt that if the use of alcohol or drugs is involved in train accidents something should be done to eliminate such hazards. It is equally important that the railroads be required to operate their trains in a safe and efficient manner rather than an economical disregard for safety that is being practiced on many railroads.

Senator DANFORTH. Thank you.

Mr. Woischke.

Mr. WOISCHKE. Good morning, Mr. Chairman.

My name is John Woischke. I am the legislative liaison for the Brotherhood of Locomotive Engineers, and I am also a locomotive engineer.

I consider it an honor to testify before the Transportation Subcommittee and the Senate, and I am really excited, I am bursting at the seams and want to tell you about what our organization has been doing with respect to this problem.

The BLE has taken a decisive lead in searching for a remedy to this problem, as it is our members who perform the most important and responsible job on the railroad. After much study and assessment of this problem, several facts have been revealed.

First, the overwhelming majority of operating personnel are rule-abiding employees. Second, these employees do not condone the use of alcohol and/or drugs in the workplace. Third, the overwhelming majority of workers do not want to work with someone who is under the influence or who consumes while on the job. Fourth, in

almost every case the fellow workers know who the problem users are, and they also know when someone is using occasionally at work. Fifth, no fellow worker will report a rule-violating coworker when it will cost the imbibor his job. Sixth, many labor and management personnel participate in this conspiracy of silence. Seventh, some management personnel have an alcohol and/or drug problem themselves. Eighth, operating personnel expressed to us that rule G violators should be taken out of service but should not be fired on the first offense unless they refuse a rehabilitation program. And last, but certainly not least, the rule enforcement/penal approach identifies and removes about 1 percent of those who violate rule G. This was also revealed in the REAP Report which you referred to earlier.

It becomes readily evident that the present system does not effectively deter dangerous behavior. The police penal approach to this problem has proven very ineffective for the last 150 years, and it is time for a change.

A new concept has been developed and implemented in a prevention program on the Union Pacific Railroad. It is entitled "Operation Red Block." The program is not an off-the-shelf product that has been purchased and forced on labor as a solution. The goal of this program is to prevent the problem, and it is a campaign owned, designed and implemented by labor at the grassroots level.

Operation Red Block is not an adversary procedure where management challenges labor and both regress to the old, futile head-butting routines of the past. This program is a cooperative effort, and it is built on sound knowledge and understanding of the problem.

People must be given help for their alcohol and/or drug problems, not punishment. With the establishment of a bypass agreement, railroad employees—both labor and management can prevent and are encouraged through peer referral to prevent a rule G violator from breaking any other operating rule by stopping the inebriated person as he enters the workplace, or by apprehending someone who attempts to consume while on the job.

With a bypass provision in effect, fellow workers and line officers are aware that an individual can be placed in a program without losing his job. Without this option, line officers often look the other way, and fellow workers risk their own jobs, limbs, and lives, as has often been demonstrated in this industry. They will do this before they will ever report an incapacitated coworker. They will get on the train and work with them. Thus, without a bypass option, almost every time an inebriated person enters the workplace, he has another opportunity to cause a disaster.

A committed, labor-management effort which incorporates training, education, awareness, and role modeling can result in effective peer referral programs that involve 100 percent of the railroad employees. The overwhelming majority who are rule abiding, the silent majority who have always kept their mouth shut in the past, will join forces to get those who are troubled or addicted into a program, and this ensures a safe workplace. Those who are occasional or recreational users soon realize that they will not be tolerated in the workplace, and if they want to try their luck, their fellow workers will reject them.

I am not here today to tell you that our program is 100 percent effective, but I can assure you that it will identify and remove far more than 1 percent of the rule violators. As more railroads adopt the prevention philosophy, there will evolve an optimal program that will resolve this issue.

Today I am presenting two position papers.¹ The first is titled "What is a Rule G Bypass Agreement?" and it explains the elements of the necessary catalyst for a peer referral program.

The second paper is titled "The BLE's Experience With the Rule G Bypass Agreement and the Establishment of Peer Referral Programs," and it reflects our actual experience with voluntary programs that implement the prevention philosophy.

Contrary to some beliefs, the solution to the alcohol and drug problem is not a matter of collective bargaining. This issue enters the collective bargaining arena only if the rights and agreements of our members are violated, such as when a carrier attempts to solve this problem in an irresponsible way. And in our discussion I would certainly like to comment on the Burlington Northern situation.

Now is the time to develop new programs within the industry that involve peers. As our economic conditions improve and the World War II era employees retire, there will be a large influx of new employees in the railroad work force. It is important that these new employees discover on their first day in the workplace that the use of mind-altering chemicals is unacceptable by everyone who works on the railroad. The carrier should also implement some type of preemployment background check to preclude the hiring of anyone with a chronic alcohol or drug use problem.

In conclusion, since 1974 the BLE has been active in promoting employee assistance programs, and on recent occasions we have formally extended the olive branch to the railroad industry. On November 21, 1983, President Sytsma wrote a letter to Mr. William Dempsey, president of the Association of American Railroads, calling on the industry to join in a cooperative effort to solve this problem.

On May 4, 1984, in our official publication titled "The Locomotive Engineer," in a message from the president titled "Let's Solve This Problem Now," which was distributed throughout the industry and Government, President Sytsma again called for a combined effort to solve the alcohol and drug problem.

The BLE initiated and kicked off a very promising program on the Union Pacific Railroad and again today I, as a Brotherhood of Locomotive Engineers representative, call upon all concerned to look at our program and participate with us in overcoming a national atrocity.

Thank you.

Senator DANFORTH. Gentlemen, thank you very much. Very good job.

I do not know if you have had a chance to study the proposal that was announced by Secretary Dole today. From what you know of it, does it seem to you to be a pretty good approach? It sounds as though it is pretty much what you are advocating, Mr. Woischke.

¹ See p. 59.

Mr. WOISCHKE. Yes, sir; it is pretty much in line with what we are looking for. The testing issue probably has been the biggest stumbling block in approaching or trying to solve this problem. Random testing certainly presents quite a number of problems. You have heard the discussion about the use of detection devices falling within the realm of collective bargaining.

I would like to point out that on November 14, 1980, the U.S. District Court for the Northern District of California agreed and placed the Southern Pacific matter before the first division of the National Railroad Adjustment Board.

Senator DANFORTH. Well, her suggestion was not for random testing, but only testing in the case of just cause.

Mr. WOISCHKE. This is correct. A lot of railroad officers have thrown the issue up to me about the use of roadblocks on our highways. I have been in touch with the Maryland State Police Department to ask them about their testing procedures on the highways.

The very first thing that they explained to me was that this procedure is not a form of random testing. First of all they must establish a reason to set up a roadblock, and once they do that, they will stop every car. They cannot discriminate or randomly pick cars. Once they stop a car, they do not ask everyone to submit to a sobriety test.

They explained to me that only in cases where there is probable cause do they subject anyone to a sobriety test.

Senator DANFORTH. That, as I understand it, is about what they are suggesting; that is, they are not just going to have everybody run through a screen every now and then, except initially before a person is hired.

Mr. WOISCHKE. Yes; we promote that.

Senator DANFORTH. And then subsequent to the person being hired, as I understand the proposal, if there is an accident, then there would be a test, or if there was cause to believe that the person was under the influence of alcohol or drugs, then there would be a test.

Would that seem reasonable to you?

Mr. WOISCHKE. Yes; very reasonable. And as a matter of fact, we have promoted that procedure in our article addressing the testing issue which we have sent out to the industry.

Senator DANFORTH. So it would seem, that as far as you are concerned—I do not want to lock you in, because you have not had the time nor have I had the time to really analyze this—that this is heading in the right direction.

Mr. WOISCHKE. That is correct, because we have very good voluntary programs in effect that are quite successful. And whatever we do, we do not want to destroy that.

Senator DANFORTH. Right.

Mr. WOISCHKE. We want to build on these programs.

Senator DANFORTH. Yes.

How about you, Mr. Hardin? Your comments were more negative toward the Secretary's proposal. But I know you have not, nor has anybody else had an opportunity to really analyze what they have done, and there will be a period for that now.

However, do you have a preliminary view as to what was proposed today?

Mr. HARDIN. I have talked to the Secretary. I knew what was coming. Like you, I have not seen an actual print of it.

We do have a problem with—and incidentally, the case that my associate talked about that went to the courts, the courts ordered it to go to the first division, and the first division ruled against the use of the intoxilator. So I do not know, but I have spent many hours with Mr. Dempsey and his group. We can work something out, but the probable cause issue gives us a problem.

Senator DANFORTH. There has to be something, though, does there not? I mean if somebody shows up at work and he appears to be drunk and the supervisor sees him, you do not want the supervisor to just say willy-nilly you have been drinking, and you are out. On the other hand, you do not want the supervisor to just be administering tests at the drop of a hat to anybody. So I mean there has to be some sort of middle ground.

Mr. HARDIN. I think there just has to be one guideline: That if a supervisor or a railroad official sees someone incoherent or staggering or something that is a valid, reasonable cause, yes. But if he thinks he is drunk just because he does not agree with him on something else they might be talking about, no.

We have no problem with it if we can nail down what probable cause is.

Senator DANFORTH. True. Well, it is always going to be a gray area. In law enforcement there has been a kind of a meaning given to it. You cannot just stop and frisk anybody who is walking down the street.

Mr. HARDIN. It was also mentioned today the fact that people have to have a license. Well, in the railroad industry, it is a term of employment. Every employee agrees to abide by or be cognizant of the operating rules of that company. That is not a negotiable matter. That is a dogmatic right of the railroad, and our employees take rule examinations every year. We consider that the same as being licensed, because they have proven that they are aware of the rules and will live up to them.

Senator DANFORTH. You do not think that there should be a licensing requirement?

Mr. HARDIN. I do not know how we can have a realistic licensing arrangement such as an airplane pilot license.

Senator DANFORTH. How about you, Mr. Woischke?

Mr. WOISCHKE. I would like to touch on that. If you want to address the issue about a license, I think we should make a comparative analysis between the pilot job and the locomotive engineer's job.

For example, Federal regs spell out that a pilot will work somewhere in the ball park of 100 hours per month, and I think it is by agreement that they work somewhere between 70 and 80 hours per month. If we want to license locomotive engineers, let us look at the number of hours they are required to work. Our representative on the Burlington Northern, for example, tells us about engineers that are required to work 30 days a month, twelve hours a day.

The individual who is required to work that number of hours needs some time for recreation. Their off time, or time away from the railroad, centers around the telephone, anticipating the next

call to work. After a while, someone's recreational consumption is going to interfere with his work.

I would like to see a maximum number of hours per month that a person is required to work, and once an individual accumulates this time, it becomes his option to continue to work. Of course he would be responsible for being in a condition to work if he so chooses to answer the phone.

With this option an employee will have free time around which he can plan his recreational activities.

I would like to make another comment about the wrecks that you mentioned earlier at Livingston, LA, and Sullivan, IN. Our philosophy on the prevention issue is this: If we cannot prevent a person from consuming before he comes on duty, our program will prevent this person from working if he does come on duty under the influence. Or, if he is on duty and he wants to consume while on duty, we will prevent him from continuing to work. This is accomplished through education, awareness, training, and role modeling.

We teach our fellow workers, who are the overwhelming rule-abiding majority, how to handle this situation, and we make them aware that the imbibitor will not be fired.

Senator DANFORTH. Just looking at the Secretary's proposals, I think it is a good proposal. But I think it is always the case that you can have any kind of rule that you can imagine but it really always comes down to issues of self-control, enforcement, and the norms that are followed in that line of work.

If it is the thing to do, any rule is not going to do a very good job of stopping it. On the other hand, if it is not the thing to do, it is going to be prevented.

Mr. WOISCHKE. Something I would like to share with you is the success of the volunteer programs in effect on the Union Pacific. I think you would find it amazing. Darrell Sorenson can certainly vouch for this. You will find it amazing to see the interest and enthusiasm that the employees are showing about this program. It is almost like the Hawthorne effect.

You have given them some attention. You have said, here, it is your problem. You face it every day in the workplace. What do you want to do about it? It has been amazing how these people have responded. We have given them a chance to use their talents and their abilities, whereas, before, this has never been done.

Incidentally, it is not out of the cold that we are promoting this philosophy. We have very seriously looked at the airlines and the maritime industries. The Association of Flight Attendants has a very effective peer referral program. I believe about 5 or 6 percent of their people are in programs through peer referral.

I explained this one time in a workshop, and one railroad manager said to me, oh, I do not give a damn about a bunch of girls out there flying around in an airplane. He says, I run a railroad. So this is the kind of attitude that we are up against at times.

Senator DANFORTH. Gentlemen, thank you very much.

Next, we have Mr. Paul Molloy, a lawyer with the firm of Isham, Lincoln & Beale.

STATEMENT OF J. PAUL MOLLOY, ATTORNEY

Mr. MOLLOY. Thank you, Mr. Chairman.

I would like to submit copies of my testimony for the record and summarize my remarks.

I appreciate the opportunity to appear before your committee on the subject of alcoholism and drug abuse in the railroads. From 1966 to 1972, I worked in this body, and for most of that time I was Republican staff counsel to this committee. In that job, I became familiar with both the railroad industry and alcoholism.

I left the committee staff in 1972 to go into business. Looking back at that point in my life, it becomes clear that I really left the committee in order to devote all of my time to being a practicing alcoholic.

In less than 2 years, I hit bottom. During that period of time, I managed to spend several nights in jail, several months in a mental ward of a hospital, lost my family, and became a skid row bum.

Fortunately, I finally accepted treatment for my alcoholism, and have been sober for about 10 years. In early 1975, while living in a halfway house for recovering alcoholics, I was hired as associate minority counsel to the House Energy and Commerce Committee. I was involved in all the legislation affecting the railroad industry from 1975 through 1981.

For a number of years, I have been open about my own recovery from alcoholism, in hopes that knowledge of my experience will encourage practicing alcoholics and drug addicts to seek help. Alcoholism and drug addiction have been recognized as diseases by the medical profession for over 25 years. Recovering from the disease is possible only through total abstinence from drinking or taking drugs. There is no magic cure.

Both alcoholism and drug addiction are progressive. The longer one is addicted, the worse it gets. Relapses are a common symptom of the disease. Relapses are preventable through the use of treatment and continued support from groups such as Alcoholics Anonymous.

I was sitting here today thinking about 15 years ago when this committee was considering railroad safety. It was in the preparation of the Railroad Safety Act of 1970, which gave FRA and DOT the authority they now have, that Mr. Dempsey and Mr. Chesser and a number of other individuals began to work on a task force to figure out what should be done to improve safety on the railroads.

One of the arguments at that time was whether employees should be licensed. The committee decided licensing was not required but there needed to be some Federal oversight of the entire area of rail safety. The Rail Safety Act of 1970 grew out of that need to have the Federal Government involved in some oversight to help assure railroad safety.

I also noticed that some of the staff people and various witnesses had been around in 1978, when the Office of Technology Assessment looked at the matter of railroad safety.

One of the things that the staff at that time and the Office of Technology Assessment noticed was that alcohol and drug abuse were a problem, but at that time we all encouraged them to focus

on a bigger problem. At that time the real problem was that trains were falling off the tracks because railroads did not have enough money to repair the tracks.

Their report in 1978 led to the kinds of things that happened when the Congress decided to deregulate railroads. Since deregulation, railroads are going through a state of flux and change. It is a positive state of flux and change. During the last recession, the railroad industry was financially healthier than they had been in almost any year since 1929.

A number of mergers have taken place. The companies are changing within the industry. During this state of flux within the industry is an ideal time to really lick the problem of alcohol and drug abuse. I am convinced the problem of alcohol and drug abuse can be licked by the railroad industry.

One of the great problems that has been referred to today by various witnesses is the tendency to cover up for the alcoholic. During the years that I was working with this committee, I was stopped by the police 12 times while driving, and I was drunk. Things were a little different in those days. Each of those times, the police brought me home, and thought that they were doing me a favor.

Looking back on that, they were doing me no favor. Had I been given a DWI and lost my driver's license, it might have gotten my attention sooner. I might have gotten serious about doing something about my alcoholism.

This kind of concept is called tough love. It is the kind of tough love that is practiced by those in Alcoholics Anonymous. Any given night in this city there are about 120 meetings of recovered alcoholics and drug addicts. In the world as a whole now, there are probably over 2 million members of AA helping each other stay sober.

The relapse problem for the drug addict or the alcoholic is a big one. Groups such as Alcoholics Anonymous provide that kind of peer support that prevents a relapse. Why I am very excited about Operation Red Block, which was talked about here today, is that the railroad industry has begun to lock into those individuals within the industry who have recovered from the disease of alcoholism or drug addiction and enlist their support to exert the kind of peer pressure necessary to put a stop to alcohol or drug use on the railroad.

There is a need for education programs for those 85 percent of the individuals who drink but will never become alcoholics or drug addicts. They need to be educated that they do no favors by covering up for the person who has the problem. They need to learn the business of tough love.

The railroad industry is a highly disciplined, well organized industry. Today there are about 338,000 employees in the industry; 15 years ago there were nearly 1 million employees. Within this shrinking industry, there have been all kinds of pressures on the employees as to whether or not they would have their jobs tomorrow. At one point we had 10 railroads bankrupt at the same time. With lots of employees worrying about whether the railroad would be there for a job in the next year there was a tendency for discipline to break down.

During that period of time there was a laxness with respect to the enforcement of rule G. It was human nature not to want to get the guy fired for a violation of rule G anyway. It became a double concern when everyone was going through this kind of trouble and insecurity, and this kind of coverup created the problems.

The only way that coverup is discovered is when there are five railroad accidents and it turns out that alcohol or drug abuse caused the accidents.

I have not had a chance to review the rules proposed by the Secretary this morning, but they sounded as though they were heading in the right direction. They seem to be directed toward concerted, cooperative effort with everyone working together to develop a great deal of pride among people in this industry toward saying not only was this industry the first industry that recognized that drinking and drugging did not mix with doing the jobs to be done, but now it has the opportunity to become an industry that is totally free of alcohol or drug abuse.

The only way that one can get the industry totally free of drug and alcohol abuse is to have the cooperation of the rank in file employee. Everyone has to take pride in the fact that if you work for the railroad, you don't drink before you come on duty and you don't drink while you are on duty. That reservoir of pride exists. Programs such as operation Red Block can tap into it.

You and I have both met people who work in the railroad industry and cannot help but be impressed by the pride they show for their company; the pride they show for their labor organization, the pride they show in being railroaders. That pride can be tapped so that the industry begins at the grassroots to lick the problem. The problem really can be licked in a very short period of time.

One of the things that I have suggested in my testimony is that it may be that the labor organizations and management will chose to develop some kind of nonprofit organization to be able to spread the good news. Right now, the national task force that is set up at FRA is spreading the good news. When one railroad has a good idea, another railroad is learning about it. Unions and management together are working out ways to get at this problem and get it licked.

There are lots of things happening at different railroads that should be shared. The Norfolk & Western, for example, has fully utilized the recovered alcoholic in providing outreach as counselors. At first blush it looks as though there are only 9 counselors at Norfolk Southern, and that is 1 counselor for every 3,000 people.

But then when you look behind that figure you find that there is one counselor who has 27 recovered alcoholics with over 5 years' sobriety who help him on a volunteer basis. That kind of outreach is necessary because railroad employees are spread out. The railroad may be 10,000 miles long, and people live all along the way.

When you get into the business of motivating the alcoholic or the drug addict to go to treatment, to go through rehabilitation, and to avoid relapses, there is a lot of one-on-one relationships that are needed. It is too expensive for Government to provide those kinds of one-on-one relationships. It is too expensive for big companies to provide that type of one-on-one relationship.

So you need to take the people who have succeeded, and are success stories, and get them out in the community so they go to the alcoholic's home, or the drug addict's home, and say, I did it, you can do it, too.

Thank you.

Senator DANFORTH. That was just remarkable, Mr. Molloy. I really appreciate it so much.

I think for you to come in and very candidly tell us your own history and tell us in such a straightforward fashion what you think the prospects are is really exciting.

Where do we go from here? As I was listening to you very attentively, I was thinking in the back of my mind that Mr. Woischke and you should get together and maybe cook up something between you or with the railroads. Maybe we could help facilitate that somehow. You really do have a terrific message.

And Mr. Woischke said the same thing. The peer pressure and general attitude of people who work for the railroads are more important than anything else that could happen. You could really help further that.

Mr. MOLLOY. Well, Senator, I have found that the people in this industry, both on the management side and on the labor side, have always approached this problem with lots of good will.

For example, as early as 1972 the then president of the UTU, Al Chesser, distributed booklets to every one of his members saying, look, if you have a drinking problem or a drug problem, there is something you can do about it. You can get treatment. Mr. Hardin for years before he became president of UTU would go around to individual railroads and give them a soft sell that there was a way to solve the problem. Get an EAP started. The N&W program, for example, is one that was started in this way.

Mr. Dempsey in the early seventies began to say, how can we get a handle on the problem of alcohol and drug abuse?

What happens is, that because 85 percent of the people who drink or occasionally use drugs will never have a problem, it becomes very difficult for them to understand why the addict cannot behave as they behave.

I think today there is a greater awareness that alcoholism and drug addiction are diseases, and a certain percentage of the population are going to be hit with those diseases, and the way to solve the problem is to be open, honest, and straightforward.

I have one problem about random testing which has been suggested by some carriers. As I hear the carriers' position of wanting to do random testing, as an alcoholic, I realize that had I been in that kind of situation, where I knew there was going to be random testing, I would have been tempted to go from alcohol to some other kind of drug that would be harder to detect. During the days of alcoholism, you are constantly trying to figure out how to beat the system.

I worked very hard when I worked for this committee and sometimes hit home runs, but I did that because I had to. I had to be exceptionally good when I was good, because I created a climate that my bosses would tolerate when I was very bad.

That kind of over compensation and con is a part of the disease. That is why it makes it so difficult to detect, unless you get the full

cooperation of the work force. Unless you get the recovered alcoholics plus those who don't have the problem deeply involved so they understand the problem and they take great pride in having an industry that is free of drugs and alcohol there will continue to be cover up.

Senator DANFORTH. Thank you very much. What can we do to help your cause?

Mr. MOLLOY. I think that by holding these hearings you have helped. I think by showing that Government is concerned, by bringing the industry together, Secretary Dole, John Riley, and your activities have all helped focus a correct path for the solution, because the solution rests with the carriers and the labor unions. It is in the first instance their industry.

The fact that alcohol abuse or drug abuse can cause accidents that can injure the rest of us is really secondary. These are the people who work day in and day out and earn their living from this industry. They have all the good will in the world, and now as they move toward sharing good ideas, I think that you will find a dramatic change.

I think you will find that when one railroad does something that works, it will quickly be transmitted to the other railroads, and pretty soon the industry will be proud not only of the fact that they have learned to cope with deregulation, but because they have solved the alcohol and drug problem which has social implications and economic implications.

It is good business for a business not to have to put up with alcoholism and drug addiction.

Senator DANFORTH. Mr. Molloy, thank you very, very much.

[The statement follows:]

STATEMENT OF J. PAUL MOLLOY, ATTORNEY

My name is J. Paul Molloy. I am an attorney with the firm of Isham, Lincoln & Beale, Suite 840, 1120 Connecticut Avenue, N.W., Washington, D.C. 20036.

I am a member of the D.C. Bar Special Committee on Alcohol Abuse. I am Co-Chairperson of APAL, Inc., a non-profit corporation established by the D.C. Bar, which intervenes and provides assistance to lawyers in D.C. suffering from alcoholism or drug addiction. I am co-founder and board member of Oxford House, Inc., which provides self-support housing for recovering alcoholics.

The views I express today are my own and do not necessarily represent the views of any clients.

Mr. Chairman, I appreciate the opportunity to appear before your committee on the subject of alcoholism and drug abuse on railroads. From 1966 to 1972 I worked in this body. For most of that time I was Republican Staff Counsel to this Committee. In that job I became familiar with both the railroad industry and alcoholism.

I left this committee staff in 1972 to go into business. Looking back at that point in my life, it becomes clear that I really left the committee in order to devote all of my time to being a practicing alcoholic. In less than two years I hit the bottom. During that period of time I managed to spend several nights in jail; several months in the mental ward of a hospital; lost my family; and became a skid row bum.

Fortunately, I finally accepted treatment for my alcoholism and have been sober for about ten years.

In early 1975, still living in a half way house for recovering alcoholics, I was hired as Associate Minority Counsel to the House Energy and Commerce Committee. I was involved in all the legislation affecting the railroad industry from 1975 through 1981. For a number of years I have been open about my own recovery from alcoholism in the hopes that knowledge of my experience would encourage practicing alcoholics and drug addicts to seek help. Alcoholism and drug addiction have been recognized as diseases by the medical profession for over 25 years. Recovery from the

disease is possible through total abstinence from drinking alcohol or taking drugs. There is no magic cure.

Both alcoholism and drug addiction are progressive. The longer one is addicted; the worse it gets. Relapses are a common symptom of the disease. Relapses are preventable through the use of treatment and continued support from groups such as Alcoholics Anonymous.

The disease concept of addiction has replaced a moral concept. There have always been drunks and drug addicts in our society but only within the last 50 years has there been an awareness that some of the drunks and drug abusers are the way they are because they have a disease of addiction. For years it was believed that nice people, with strong moral character and discipline, did not drink the alcoholic way. Today it is realized that between 10 and 15 percent of those who drink will become alcoholics and become physically, mentally and spiritually addicted to the use of alcohol. The same is true with respect to the use of other addictive drugs. For the addict, the abusive use of alcohol or drugs is not a matter of choice. It is a necessity.

What confuses the disease concept of addiction is that 85 percent of the individuals who use alcohol or drugs will not be addicted. For this group of individuals, abuse of alcohol or drugs is a matter of choice. For them, drinking too much alcohol or getting high on drugs is something they can control. The fact that they may not control the excessive use of drugs or alcohol immediately before they go to work or while they are at work shows a lack of discipline but not addiction.

The matter is further complicated by the progressive nature of the disease of addiction. An individual may drink or use drugs for many years in a non-addictive fashion. Then, for some unexplained reasons, what had been abused by choice becomes abused by necessity. Abuse of alcohol and drugs on the railroads is done by two distinct groups of individuals—those who are addicted and those who by their own choice abuse.

ALCOHOL AND DRUG ABUSE ON RAILROADS

Alcohol and drug abuse on railroads has been a difficult problem to get under control. Part of the reason has been the nature of alcoholism and drug addiction. About 25 percent of those who violate Rule G are addicts and violate the rule because of their disease rather than by choice. They work hard. They fool their bosses. They fool their fellow employees. They fool themselves. Everyone knows they have a drinking or drug problem but do not want to blow the whistle because they like the fellow and do not want him to lose his job.

Part of the reason that alcohol and drug abuse on railroads is difficult to get under control is the nature of the industry itself. Railroadings involve a movement of trains over long distances, with little direct supervision and away from home crew layovers. The movement of trains occurs day and night and there is some uncertainty as to when an operating employee is to be called on duty. Non-operating employees, such as signalmen or maintenance-of-way employees, share the uncertainty of duty hours but to a lesser extent.

Railroads learned long ago that moving massive pieces of equipment in a train does not mix well with the use of alcohol or drugs. It is hard work and takes unimpaired physical skill and straight thinking. Early railroad unions took advantage of this fact by gaining recognition from railroad companies by promising to provide a work force that did not drink.

Railroads are also highly organized and well disciplined. Rule G which prohibits the use of alcohol or drugs by operating employees is well over 100 years old. Any worker caught drunk on duty is fired. Last year nearly 500 employees were caught and were fired. The problem arises because for each employee caught for Rule G violation there are many who are not caught. The accidents at Livingstone, Louisiana; Sullivan, Indiana; and Wiggins, Colorado; are vivid reminders of two things. First, drunk employees cause accidents. Second, Rule G is an insufficient deterrent to keep drunk employees from operating trains.

Each of the railroads having these accidents has a tough Rule G.

Each of the railroads has a good Employee Assistance Program.

Each of the railroads generally have very safe operations.

What went wrong? Cover-up.

Every railroad employee has a duty to report an employee under the influence of alcohol or drugs or using alcohol or drugs. Last July when the Federal Railroad Administration announced hearings on this subject, their notice referred to the "conspiracy of silence" practiced by railroad employees who failed to report Rule G violations. The conspiracy of silence exists because no one wants to be responsible for

causing a fellow employee to lose his job. This is particularly true if it is perceived that the poor fellow can't help himself because he is an alcoholic or drug addict.

The cover-up phenomena, of course, is not limited to the railroad industry. It is part of human nature. Fortunately, on the highways today there is less of a tendency to cover-up than there was a few years ago. I recall during my active alcoholism during the late 1960's that I never received a ticket for driving while intoxicated. I did get picked up 12 times in the District of Columbia and Montgomery County, Maryland where I live. Each time I got picked up, the police officers felt they were doing me a favor by driving me home and not giving me a ticket. Looking back at those days, they did me no favor. Had they given me a ticket and had I lost my license for driving while intoxicated it may well have precipitated a crisis which would have caused me to sober up sooner.

Among recovering alcoholics there is a concept called "tough love". Tough love involves confronting the alcoholic or problem drinker rather than covering up for him or making excuses. During the last 15 years the concept for treating alcoholism or drug addiction has radically changed. Fifteen years ago it was assumed that an addict had to "hit bottom" before he or she would be ready for recovery. Modern medical practice relies heavily upon early intervention. The purpose of early intervention is to create a crisis in the addict's life during the early stages of his or her addiction. Chances for recovery are greatly enhanced if treatment for addiction is begun during its early stages of development.

The problem of alcohol and drug abuse on railroads can be solved if the industry improves its performance in the following three areas:

1. Prohibition of the use of alcohol or drugs throughout the industry;
2. Fair enforcement of Rule G; and
3. Development of grass roots prevention responsibility.

PROHIBITION OF ALCOHOL OR DRUG USE

Rule G was originally limited to operating employees. Most railroads have similar rules for most non-operating contract employees. At least one railroad—the Southern Pacific—has prohibited the use of alcohol or drugs by all employees in the company—both union and management. The total prohibition of alcohol or drug use by employees at work is good business. It is particularly good business in the railroad industry because it reinforces the importance of non-use of alcohol and drugs by operating employees.

Moreover, railroad companies should strengthen the non-drinking environment by rigorously testing applicants for employment for drug or alcohol use. From the moment an individual applies for employment at railroad, he or she should be made aware of the fact that alcohol or drug use is not permitted. When the applicant is a recovered alcoholic or drug addict, arrangements should be made to assure immediate dismissal should a relapse occur.

A sense of fairness is essential for breaking down the cover-up or conspiracy of silence. If addicted employees are not given an opportunity to seek treatment, non-addicted employees will be more reluctant to blow the whistle on them. The Great Northern Railroad recognized this problem as early as 1950 when it established the first Employee Assistance Program (EAP). Other carriers followed suit. The Seaboard Coast Line initiated its program in 1966; the Union Pacific ICG; Milwaukee; Norfolk and Western and the Chessie began their programs in the early 1970's. By the mid-70's Southern Pacific and Conrail had programs. Each of these programs provided treatment for alcoholics who voluntarily requested treatment. Today all major railroads have Employee Assistance Programs in order to assure fairness for the addicted employee.

The following chart indicates the staffing of the various programs for railroads with more than 10,000 employees:

	Employees	Staff	Average No. employees per counselor
Atchison, Topeka & Santa Fe Railway.....	26,500	3	8,833
Amtrak.....	20,321	8	2,540
Burlington Northern.....	41,000	10	3,727
Canadian National.....	50,000	7	7,143
Conrail.....	39,875	8	4,984
Chicago & North Western.....	12,800	2	6,400
Chessie System.....	29,939	5	5,908

	Employees	Staff	Average No. employees per counselor
Illinois Central Gulf	11,000	2	5,500
Norfolk & Western and Southern	35,804	9	3,978
Seaboard System.....	29,137	5	5,027
Southern Pacific.....	32,000	7	4,751
Union Pacific.....	42,000	18	2,333

When one considers the fact that railroad operations are spread out over thousands of miles, the EAP staffs are not very large. In some instances, however, the effective staff is much larger than it would seem from the figures given. The Norfolk and Western, for example, uses recovered alcoholics and drug addicts as volunteer members of its counseling staff. While the chart shows that they have nine staff people for approximately 36,000 employees, the number of counselors is really much greater because recovered alcoholics are used as "resource persons". One counselor has 27 resource persons, each having over five years of sorority, working directly with him. This railroad utilizes recovered employees much better than any of the other carriers in the country. Such utilization is essential if an Employee Assistance Program is to have sufficient out-reach for early intervention and support following treatment. I would hope that all other carriers would follow the example set by the Norfolk and Western and now the merged company Norfolk Southern.

The adequacy of an Employee Assistance Program is the first element for achieving the fairness essential for enforcement of Rule G. The second element concerns what happens to the individual who goes through rehabilitation. The practices between the various carriers differ considerably. For example at Conrail there is no assurance that a person who has successfully gone through treatment and rehabilitation will return to his job. There, the ultimate responsibility rests with the employee's supervisor. At Norfolk Southern, on the other hand, the director of the Employee Assistance Program may return the employee to work any time that he feels the employee has been rehabilitated. By the same token, the director of the EAP at Norfolk Southern can suspend an employee from work should he have a relapse. This procedure assures a greater sense of fairness than one which divides the responsibility for return to duty between the Employee Assistance Program, labor relations, and the operating department.

To assure adequate outreach and fairness, each EAP program should utilize recovered addicts as volunteer resource persons and should exercise the authority for returning the recovered individual to work.

Another element of fairness with respect to Rule G involved the appropriateness of discipline. The traditional punishment for violation of Rule G is that the employee would be fired. In each Rule G case the employee has a right to request his union to represent him in a grievance procedure. Last year there were over 500 such grievance procedures. Last year there were over 500 such grievance procedures. Each grievance procedure costs the union and railroad management several thousands of dollars. In theory, the grievance procedure is used solely to determine whether or not the employee in fact violated Rule G. In practice, the number of other variables come into the adjudication. Some times the arbitrator will order the employee's return to duty with back pay. Most of the time the employee's dismissal is upheld.

The union has a legal obligation to represent the employee in a grievance procedure. In the past, some general chairmen have refused to go forward with an employee's grievance because they knew the employee was an alcoholic and needed treatment. Before there were formal EAP programs, some general chairmen used leverage over the employee to force him into treatment for alcoholism or drug addiction. Today most employees can receive treatment if they waive their rights to pursue the grievance adjudication.

At the Union Pacific and the Chessie, the Brotherhood of Locomotive Engineers and United Transportation Union have formalized this kind of agreement and, unfortunately, have called it a Rule G "By-pass" Agreement. It is unfortunate because the term By-pass gives many in the railroad the belief that the alcoholic or drug addict is avoiding discipline. Of course, this is not the case at all. The addict is avoiding being fired but his discipline includes treatment and rehabilitation for his disease. During the period of treatment and rehabilitation the employee is suspended from service. That is discipline.

On an informal basis, most carriers are moving away from the simple punishment of firing for a Rule G violation. Because it was perceived to be unfair, other employees covered up for the addict. The fair treatment for Rule G violation, by making the discipline appropriate for the particular situation, diminishes the likelihood of cover-up.

The most exciting development in the prohibition of alcohol and drugs on railroads has been the development of Operation Red Block by the Union Pacific, the Brotherhood of Locomotive Engineers and the United Transportation Union. Operation Red Block is a program that encourages and develops grass roots support for the prevention of alcohol or drug abuse. Last fall the Union Pacific and the unions met with one local chairman and his members after another. *Together* they developed a program for making each employee on the railroad responsible for reporting any alcohol or drug violation. Other witnesses have discussed the particulars of Operation Red Block, but I want to add my enthusiastic support for the program.

It is a kind of program that needs to be shared with other railroad companies in the industry.

It is the kind of program other railroads need to adopt as soon as possible.

GRASS ROOTS PREVENTION RESPONSIBILITY

Operation Red Block is the kind of program that gets individuals involved at the grass roots level. It appeals to the majority of the individuals who never drink on duty and always arrive on duty sober. It reinforces the fact that it is acceptable to refuse to work with an employee who is drunk or high on drugs. As a matter of fact, it creates the kind of educational base to teach every employee that cover-up is the wrong thing to do not only because of the company rule but because cover-up enables the addict to continue to kill himself.

What can be done to encourage the adoption of a good idea of one railroad at some other railroad? Good ideas always spread but sometimes a catalyst is needed to make them spread faster.

I am convinced that a nationwide non-profit corporation needs to be established which would: (a) act as a clearinghouse to spread good ideas from one railroad to another; (b) prepare and publish educational and motivational material geared to the railroad industry; (c) provide an opportunity for individual railroad employees to become members of a nationwide prevention group; and (d) provide a permanent home for the National Planning Committee on Voluntary Alcohol and Drug Abuse Programs, which was established by FRA last fall.

The federal government can provide a supportive rule for the establishment of such an organization. It can be the catalyst. It need not provide money because this is a problem that needs to be solved by the industry itself, not by the federal government.

I have attached to my testimony a short description of what such an organization might look like. I have called the organization Responsible Railroaders, Inc. because in the last analysis the problem of alcohol and drug abuse on the railroads will only be solved when each individual employee accepts the responsibility for making the industry free of alcohol and drug abuse.

The problem of alcohol and drug abuse on the railroads can be solved. Carriers and unions want to solve it. Now is the time for them to move together to get the job done.

Senator DANFORTH. That concludes this hearing.

[Whereupon, at 11:53 a.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
Cleveland, OH, June 14, 1984.

Hon. JOHN C. DANFORTH,
U.S. Senator, Chairman, Surface Transportation Subcommittee, 508 Dirksen Senate
Office Building, Washington, DC.

DEAR SENATOR DANFORTH: On June 6, 1984 a member of my staff, Mr. John Woischke, had the privilege of testifying before you and your Senate Subcommittee concerning alcohol and drug use problem on the railroads and this organization's involvement with respect to helping resolve this issue. As Mr. Woischke explained, the Brotherhood of Locomotive Engineers has expended much time and effort in its quest to conquer this problem, and I feel that the voluntary PREVENTION programs which incorporate PEER involvement will help us develop the ultimate solution.

The alcohol and drug use problem is not a labor or management problem, it is a human problem. It takes a strong, concerted effort on the part of both labor and management to effectively address this issue, and neither party can resolve it alone.

Enclosed is a list of documents and other information that I wish to submit for the Congressional Record. I am certain this material will be helpful to the Senate in determining the seriousness of this problem, what is currently being done to remedy it, and what still needs to be done to develop a lasting solution.

Very truly yours,

JOHN F. SYTSMA, *President.*

Enclosures.

WHAT IS A RULE G BY-PASS AGREEMENT?

Is it a free drunk?

Is it a cop-out?

Does it allow the worker one more free chance to cause a disaster?

Does it tell members of a union organization to "rat" on their fellow workers?

What do you know about the agreement? Do you base your position on what you have heard from someone else, or have you openly and honestly analyzed a By-Pass agreement?

The Rule G By-Pass agreement is a formal means of assuring a representative labor organization that any and all persons with an alcohol or drug problem will be granted an opportunity to receive help. Management as well as labor employees are afforded the same treatment and opportunity to retain their jobs.

TREATMENT

A Rule G By-Pass agreement encourages anyone with an alcohol and/or drug problem to voluntarily seek help. The volunteer is provided with treatment and guaranteed that he will not be fired. The By-Pass agreement assures the person that, if at all possible, he will remain in service and will be treated on an out-patient basis.

A PEER REFERRAL PROGRAM is established with the formation of a PREVENTION TEAM at the grass roots level. This team, consisting of two or more labor members, confronts the individual who arrives at work under the influence or consumes while on the job. The PREVENTION TEAM informs the recreational user to "knock it off" and refers the addicted or troubled individual to a professional Employee Assistance Program (EAP) counselor for help. Team referrals of this type do not put the responsibility on only one individual, and they ensure a strong and reasonable handling of the matter.

Never does a team try to diagnose the problem or counsel the person. For example, if a woman was about to give birth, one would not try to deliver the baby, but instead would get the mother-to-be to a doctor. The same philosophy holds true in

peer referral: do not diagnose; have concern and not contempt; and get the person to someone who can best help him—the railroad EAP counselor.

DISCIPLINE

When a Rule G violator is caught on duty by a line officer, or reported by a prevention team because he has refused to volunteer for treatment, no matter how severe his problem, he is dealt with in a disciplinary fashion. Discipline is not punishment—it is a training and education process that develops self-control, character, orderliness, and efficiency.

If the rule violator is diagnosed as an occasional user, he is held out of service for a minimal time, required to attend a DWI program or something equivalent, returned to work, and required to attend some type of classes, AA meetings, or other public or community programs concerning alcohol and drug use. Continued involvement from three months to one year, as determined by a professional EAP counselor, is mandatory. The intention is to help the individual become aware of his responsibilities to society as well as to his workers with respect to using mind-altering chemicals.

Continued railroad employment is conditional to participating in these programs. In all likelihood, this will require a person to take a job that permits regular attendance at maintenance program meetings or classes. He may have to give up a road job to work on a regular, lower-paying yard job, or perhaps he may have to forfeit a preferred yard job. It may also require a good amount of personal, away-from-the-job time. If an individual fails to meet the prescribed rehabilitation or education requirements, he is removed from service.

The individual who is diagnosed as being more than an occasional user is held out of service and required to attend a rehabilitation program until an EAP counselor certifies that he is fit for service. Again, the person returns to work on the condition that he remain active in some kind of maintenance program.

When someone claims that the Rule G By-Pass agreement allows a person to get away with a free drunk on the railroad, he obviously does not understand the agreement.

The Rule G By-Pass agreement is designed to help a person with a problem—not punish him. In most cases, it is a one-time chance. However, some railroad managers who understand alcoholism and addiction realize that failure, relapses, or falling off the wagon are all part of arresting the disease, and they have expressed a willingness to grant a second chance. Some By-Pass agreements contain such a provision. There are a few managers who feel that, as long as a person is making an honest attempt to help himself, they will help him. One manager stated that if a diabetic collapsed in the work place because his body was low on insulin, he would not let the individual lie there, even though it was the diabetic's responsibility to maintain his personal condition. He would pick him up and help him.

The By-Pass agreement covers those who violate Rule G. If someone is caught in violation of other operating rules as well as Rule G, management has the option to hold an individual accountable for all rule violations, depending on the case. Labor has no problem with this.

With the Rule G By-Pass agreement in effect, railroad employees—labor and management—can prevent, and are encouraged through PEER REFERRAL to prevent, a Rule G violator from breaking any other operating rule by stopping the inebriated person as he enters the work place. The fellow workers and line officers are aware that an individual can be placed in a program without losing his job. Without this option, line officers will often look the other way, and fellow workers will risk their own jobs, limbs, and lives (as has often been demonstrated in this industry) before they will report an incapacitated co-worker. This, without a By-Pass option, almost every time an inebriated person enters the work place, he has another opportunity to cause a disaster.

Remember, the FRA's REAP report concluded that "the 'rule enforcement/penal approach' identifies and removes only about 1 percent of those who violate Rule G."

Our city, state, and federal police agencies attempt to stop the user in society from driving on the public highways and causing disasters through a law enforcement/penal approach which is ineffective. Presently, the chance of an individual being caught under the influence on our highways is 1 out of 2,000. On our highways, like our rails, inebriated people continue to have another chance to cause a disaster.

Presently, railroad EAP programs are reporting an 83% success rate with their treatment programs.

Is it possible for a person to go through a rehabilitation program and again report for duty under the influence? Yes, but with a Rule G By-Pass agreement in effect and an effective PEER REFERRAL system, the person will only violate Rule G and, in most cases, he will be out of a job. The overall results will be far greater than today's 1% success rate.

PUNISHMENT

The emphasis is on discipline, which is training that develops self-control and character. Punishment is readily imposed if disciplinary action fails to correct someone's problem, because that person is out of a job. Losing one's job is certainly a harsh and injurious penalty.

Now is the time for railroad labor and management to exert a cooperative effort to put those who need into programs which will alleviate the hazards these people create in the work place.

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS' EXPERIENCE WITH THE RULE G BY-PASS AGREEMENT AND THE ESTABLISHMENT OF PEER REFERRAL PROGRAMS

From the perspective of the locomotive engineer, the Brotherhood of Locomotive Engineers has studied the alcohol and drug use problem in the railroad industry. Through personal interaction with our members, we have gathered information that validates the following statements, some of which are significant facts revealed by the REAP Report.

First, the overwhelming majority of operating craft personnel are rule-abiding employees.

Second, these employees do not condone the use of alcohol and/or drugs in the work place.

Third, the overwhelming majority of workers do not want to work with those who consume or are under the influence while on the railroad.

Fourth, in almost every case, the fellow worker knows who the problem users are and can tell when his co-workers use occasionally.

Fifth, no fellow worker will report a rule-violating co-worker when it will cost the imbiber his/her job.

Sixth, many labor and management personnel participate in the conspiracy of silence.

Seventh, some management personnel have alcohol and/or drug use problems.

Eighth, operating personnel express to us that Rule G violators should be taken out of service, but should not be fired on their first offense unless they refuse a rehabilitation program to help them overcome their problems.

And last, but certainly not least—The "rule-enforcement penal approach" identifies and removes only about 1% of those who violate Rule G.

In considering the above as given facts about alcohol and drug use in the railroad industry, the Brotherhood of Locomotive Engineers has developed a philosophy based on measures that will prevent the problem. For too many years, statistics have demonstrated that hard-line rule enforcement and punishment, as a deterrent, is a defensive measure that is virtually ineffective. This defensive approach fosters cover-ups, and because Rule G violators are not being apprehended, some railroad managers feel that the problem does not exist, or so state this publicly when confronted. Unfortunately, the problem remains and is sometimes revealed when there is a catastrophe. The subsequent background and record searches often demonstrate someone was a chronic user, and rumors surface that management and labor were both aware but looked the other way.

Realizing that the alcohol and drug issue is a human problem, the BLE set out to find a solution in a humane and equitable way. Our goal is to help one hundred percent (100%) of our members. The small minority of our members who have troubles must receive help for their problems, and the majority who are rule-abiding workers have a right to work in a safe environment.

It is the minority with troubles who create a problem for all. In the past, almost everyone has covered for a troubled person, for throughout the history of the railroad industry there has developed a camaraderie among railroad workers, and there exists an engrained understanding that one does not "rat" on his brother. Peer pressure reinforces this attitude, and this has to be dealt with. The rule G By-Pass Agreement provides another option: the troubled employee can receive help for his problem or go through the grievance procedure in an attempt to regain his job. The organization that represents this person in his appeal does not necessarily do so by choice, but by law. However, public law boards are making this task most difficult,

and a troubled employee readily realizes that his odds are most favorable if he chooses the rehabilitative route.

With a Rule G By-Pass Agreement in place, a troubled person is not necessarily fired, and as our members become aware of this option, they realize that they no longer have to tolerate the user in the work place. The trend now changes; no longer is the pressure on peers to cover for the user so that he will not lose his job; the pressure is on the user. The BLE refers to this attitude change as "reversed peer pressure," in which the rule-abiding majority bring the troubled employee to the crossroads of his career: either he accepts help by entering an Employee Assistance Program (EAP), or he leaves the railroad.

Through educating our members about the Rule G By-Pass Agreement as an avenue to get a troubled person to a place where he can receive help and to alleviate the unsafe conditions he creates in the work place, PEER REFERRAL PROGRAMS are developed. As these programs mature, the known problem users are urged into them for help, and a net is created which corrals occasional users who present a major problem on the railroad today. This is the optimal form of prevention. In turn, rule-abiding workers, who are in the majority, are handling this problem; it is non-user vs. user and not the age-old situation of labor vs. management. It is prevention and not defense, and it helps a majority of the employees in that they can establish a safe work place without causing someone to lose his job.

The BLE feels that establishing PEER REFERRAL PROGRAMS leads to the prevention of alcohol and/or drug use problems. It is this organization's experience that peer involvement can be developed when structured on a solid EAP program that effectively treats someone with a problem and Rule G By-Pass Agreements that develop trust, faith, and confidence among all railroad employees.

I cannot stress enough the importance of the Employee Assistance Program as the foundation upon which the rest of the alcohol and drug prevention program is built. The EAP not only deals with alcohol and drug problems, but should be designed to help all troubled labor and management employees and their families, no matter what their problems. A troubled person should not be in the work place in the railroad industry. Every employee should be aware of the EAP and feel welcome to confidentially discuss and receive help for their problems, and they should certainly not be punished for not being able to cope with some personal dilemma.

PREVENTION

Peer Referral Programs, Non-user vs. User.

Rule G By-Pass Agreement—Trust, faith, confidence—all treated equal.

EAP—Effective program that can handle the troubled person.

These programs develop through labor and management cooperatively participating in education and training.

There have been several Rule G By-Pass agreements signed by BLE General Chairmen and their respective carriers. Some have proceeded to develop Peer Referral Programs. To achieve these ends, the General Chairmen and all of their division officers meet along with the carrier's EAP people to discuss alcohol and drug use on the railroad. Because I have informed all General Chairmen of the BLE's philosophy and desire to cooperatively participate, union officers and members know where the International Office stands and there is no doubt about which direction to take. Thus, some very promising programs have developed.

Much has been learned since Mr. Darrell Sorenson, EAP Director of the Union Pacific Railroad, kicked off the first meeting on September 22, 1983 in Portland, Oregon for the Oregon Division of the Northwestern District. The BLE's Oregon Division General Chairman and his division officers met with the U.P. people and discussed the problem of alcohol and drug use by operating employees. Through this and many similar meetings that followed on the U.P., several important facts have been discovered.

1. It should be made clear to labor that the EAP manager and his counselors are not railroad management people.
2. EAP is a separate entity with its own budget.
3. At these meetings labor should be given a chance to interact with some management personnel for a fixed period of time.
4. The alcohol and drug use problem should be openly discussed so all present have a thorough understanding of the parameters of this issue.
5. The Rule G By-Pass Agreement should be further discussed so it is certain that no one has any unanswered questions.
6. This step is the most important. Through discussion, labor is asked to become involved in solving the problem, and through group participation they hash out how they want to handle their problem. This people involvement is the catalyst that jells

all the parts of these programs into an effective mechanism that works toward solving or preventing the problem.

7. BLE members have decided that they can handle their problems, and they set up their program by incorporating their ideas.

8. Peer Involvement is a delicate issue. No person is to pass judgement, make accusations, criticize, or blame another individual who has a problem.

- (a) Do not diagnose.
- (b) Have concern, not contempt.
- (c) Educate the membership.
- (d) Encourage family involvement.

9. Peer teams of two or three members have been decided upon and have voluntarily formed at the division level. Upon notification that someone is creating a problem or is troubled, the peer team approaches the individual and handles the situation in a fashion that convinces him to knock off his behavior that is creating a problem. Or, if the person is troubled, they effectively communicate that his behavior has been reported as unacceptable, he is creating unsafe working conditions, fellow workers will no longer work with him, and the affected individual should seek help through the EAP. These teams work in a confidential manner.

10. Further division involvement can be achieved by the following:

- (a) Extend the National BLE policy so all members understand it.
- (b) Design educational posters.
- (c) Mail brochures to homes of employees and include a copy of the By-Pass agreement.
- (d) Post referral committee names.
- (e) Promote local newspaper coverage of the program.
- (f) Encourage labor/management communication to discuss environmental or working conditions which may contribute to alcohol or drug use.

Further, it was discovered that this same type of meeting should be held with the railroad's line officers so they understand the issue and are informed about how the programs work. Management must also become involved because it is known that there are some people in their ranks with alcohol and drug problems, and they also have been known to participate in the conspiracy of silence, usually by choosing to turn their heads or ignore someone under the influence. They are advised that this is a concerted effort of non-user vs. user. At the management meeting they should have a fixed period to interact with the General Chairman of their respective areas.

In closing, I wish to quote a paragraph written by a Union Pacific Railroad BLE General Chairman in his report concerning the UP-BLE EAP Drug and Alcohol Use Seminar held on November 17, 1983.

"Responsibility: John Sytsma, President, Brotherhood of Locomotive Engineers, has made the statement that engineers are responsible for reporting to work sober and as alert as possible. This Committee wholeheartedly agrees with that thought. The Carrier must also realize the vast responsibilities it has vested upon its engineers. The men who are given these responsibilities are often times treated as though they were 'third-rate' human beings, performing 'third-rate' duties. The engineer's self-pride in his job with its corresponding responsibilities must be maintained. The more pride one has in his work, the better he feels about working, and subsequently, he will do a far better job. As stated in the seminar, a person uses alcohol and/or drugs to 'change the way they feel.' I firmly believe that if an engineer felt better about his job; felt as if he were worth something, he would not want to 'change the way he feels.' We are herein dealing with those employees who are not addicted, the 'social drinker or occasional user.'"

The General Chairman's report continues, and is quite extensive. I share this portion with you to demonstrate that our members are very capable of understanding and coping with the problem. The point made here also calls our attention to the fact that preventing alcohol and drug use on the railroads will require a combined labor-management effort.

STATEMENT OF KENNETH A. BRIERS

My name is Kenneth A. Biers. I am a locomotive engineer working for Conrail at Baltimore, Maryland. I have been employed by Conrail and its predecessor, the Penn Central, for 15 year. Over that period, I have worked at various occupations, including brakeman, conductor, fireman, and engineer. As an engineer, I have operated all types of freight and passenger trains up to and including Amtrak Metro-liners. I submit this statement, not as a representative of any specific interest group, but as a working railroad operating employee.

I was in attendance at the hearing conducted by the Subcommittee on June 6, 1984 and listened with great interest to the testimony of the various representatives

of government, management, and labor, as well as Mr. Malloy. Much has been said about the problem of alcohol and drug abuse over the past several years and, indeed, it is a serious one. The magnitude of the problem was forcefully described in Senator Danforth's opening statement. I am very much aware of the problem through my own work experience.

The magnitude of the problem raises a larger question which has yet to be asked: What causes so many railroad operating employees to drink and/or take drugs in connection with their work. The answer is simple—the irregularity of operations. The effects of this irregularity, however, are quite complex.

Railroad operations are highly irregular. Although some services are scheduled, the schedules are generally loose guidelines. Conrail, currently one of the best managed operations, provides a typical example. Any freight train arriving within 24 hours of its scheduled arrival time is considered to be on time. Irregularity pervades every aspect of operating employees' working lives, as well as their family lives. (See attached letter from engineer's wife.)

Physical and emotional stresses induced by the system take their toll in many ways. The use of alcohol and/or drugs becomes an attractive escape for many. Potential alcoholics and their drug-abusing counterparts are more likely to become victims of those diseases as a result of these stresses.

For the recreational drug and/or alcohol users, another set of problems is presented. Many in this group find themselves in a compromising situation quite easily and frequently. Two manifestations of irregularity are unpredictability and boredom. The attachment taken from the July 1984 issue of *Trains Magazine* discusses these problems.

It always has been assumed that the very nature of railroad operations is inherently irregular, and that every operating employee has accepted that as a given condition. I question that premise. Some operations can be conducted on a regular basis. For example, most, if not all, freight trains could be run on a regular, reliable schedule. Granted, when considered from a systems approach, a freight train is an unreliable unit of productivity. Many things can go wrong. However, many of the things that do go wrong can be attributed to mitigating factors such as insufficient locomotives, poor dispatching, inadequate inspection and servicing of equipment and, yes, even an incompetent operating employee. The significance of all these factors could be reduced by tighter control of the operation through better management. A regular schedule provides a standard by which performance can be measured and thereby becomes an incentive to improve performance. The result is beneficial to both the employer and the employees. The service being offered is improved and the employer's competitive position is enhanced. When the employees' work schedules become more regular, stresses, both physical and mental, are reduced, and the quality of life is enhanced.

The new proposals made by the Secretary of Transportation will serve to more readily detect alcohol and drug abuse among railroad employees. Their ability to deter will, I fear, be short-lived and serve only to force those who consume drugs and alcohol at the workplace to more creative methods of hiding their problem. Until the greater causes of the problem are addressed, abuses will continue.

[From *Trains Magazine*—July 1984]

THE POTOMAC PUNDIT

(By Don Phillips)

HUMAN BEINGS RUN RAILROADS . . . DON'T THEY?

It all began with a good night's sleep. Not a particularly exciting start for a tragedy. But a locomotive engineer friend (I'll not name him nor his railroad) remembers that rare night's sleep well because of the irony of what happened to him less than 24 hours after he awoke.

Like almost all road freight engineers, he is subject to call at any hour. Knowing that, he made a routine call to his local crew caller at about noon and was told that there were three crews ahead of him and that nothing was in sight anyway. Relatively safe from any call, he thought, he headed down the street for a sandwich and a beer at a local pub.

But railroading is not that predictable, and at 4 p.m., he was called for a 6 p.m. local. After one night's sleep, he would not get another.

To make a long story short, at about 4 a.m. he was rolling along a branch line headed home—more than 20 hours after his last rest—and he dozed off. No alcohol or drugs were involved, just a lack of sleep and a pesky cold that had left him somewhat groggy.

The next sound he heard was his brakeman shouting, "Hit the air." He had drifted past a meeting point, and a headlight was shining right in his face. The bump wasn't too bad, but a few cars derailed and a couple of crew members were injured. He was suspended for a long time. Until then, his record had been unblemished for more than a decade.

Worse incidents took place on the Burlington Northern in Colorado and Wyoming in April 1984 that apparently did involve alcohol and/or drugs, but which had one thing in common: the crew went to sleep. Seven men died in those two incidents at Wiggins, Colo., and Newcastle, Wyo., when heavy trains ran through CTC signals and plowed into other trains (see "Arrivals & Departures").

No one is trying to excuse the crews in any of the incidents. My engineer friend makes that clear: he was guilty, and he knows it. One BN engineer paid with his life, and the other may never return to work. Alcohol and drugs are running rampant on the rails, and something must be done about it. In previous columns, I've suggested universal testing and enforcement coupled with rehabilitation programs that bypass punishment—one time only—for those who are caught and enter treatment programs. It appears that the BN wrecks may finally galvanize the Federal Railroad Administration into action.

But while strict enforcement is necessary, I want to speak up again about the factor that railroad management and Government seem to ignore—the psychological and physical impact of over-the-road work on the men who run the railroad.

My engineer friend did everything right before he reported for duty, but he was set up for a situation that left him drifting along before dawn with no sleep. He had no warning to take a nap before his run, even if he had been able to. If he had attempted to call off sick, not only would he have not been paid, but he would have developed a reputation as a slaggard and perhaps been punished.

Similar choices are presented to railroaders every day. Picture yourself after a run, stuck in a motel in the middle of nowhere, away from home, not knowing when you will be called. What do you do, particularly after you have been in the same place hundreds of times? Often, you drink. What do you do, then, if you've had several beers and your call comes? Call off drunk? Most of the time, the decision is to stick it out, try to stay awake, get home . . . and get paid.

There is no such thing as a regular night's sleep or regular working hours for a vast number of railroadmen for their entire working career. Planning a night out with friends or family at home becomes a difficult—if not impossible—task.

You are encouraged to cut corners, to lie, to cover up, because if you get away with it, there is no punishment. If you are caught for even the smallest infraction, however, the macho Prussian style of railroad discipline may well come down hard on you. Your tiredness, your boredom, your personal problems will not even be considered in that process. And most railroads do not even provide help for the No. 1 problem—alcoholism—even if you admit it up front.

I have been accused by some (including John Kneiling in a zinger of a column) of making excuses for those who should be thrown off the property, and perhaps into jail. BN apparently agrees with John, because it has sued the conductor in the Wiggins wreck and the engineer in the Newcastle wreck for millions of dollars in damages. There were no suits for a management who failed to spot drunk crews or who failed to instal cab signals or automatic train stop.

But I say that until this human problem is confronted and dealt with in some way, the overall problem will not go away. The old ways have failed. Why not try something new?

If you treat a man like a meaningless drone or a naughty child, don't be surprised if he acts that way.

[From the Locomotive Engineer April 20, 1984]

FROM THE MAILBAG . . . STRESS PROBLEMS

I have read your article on stress and have thought about this for days. I believe that you have only touched on the subject of stress for railroad men—not to mention their families.

My husband and his family have been with the railroad for years, and we have many friends with the railroad. From both experience and knowing different rail-

road families, I can truthfully say that railroad people and their families have a life that is different from most. Railroad men deserve every penny they make.

You did not mention in your article the rules and regulations that every man in railroad operating service has to know. If he makes a mistake, regardless of how minor, there is going to be an investigation. For almost every situation on the railroad there is a rule or regulation that says that you should have done the opposite. And if you would have done the opposite thing, then they will find a rule that says that you should not have taken that action either.

Then it's the pressure of discipline: five or 10 or 15 or 45 days off without pay. And there is also the constant fear of being fired. These thoughts are in the back of the minds of railroad men at all times.

Can you imagine what it is like to work with someone who is an alcoholic or someone who smokes marijuana or takes drugs on the job? Maybe he is an old-timer who has been with the railroad for years. Can you go and turn him in and have it on your conscience for his losing his job when he has a family to support?

On the other hand, if you don't turn him in and there is a serious accident where someone gets hurt, then you have that on your conscience—that you didn't report the guy beforehand. My husband has come home many a night telling me of the railroad men that he's worked with that were reeking of alcohol.

And then what about their sleep habits? That's a story in itself. A man works a day job for three weeks, gets pulled and goes to a night job. It takes three or four days to adjust to the change. What about the guy who works the extra board? On eight hours, off eight hours? Wrong!

A two-hour call: 4:30 for 6:30 yard job. You work from 6:30 to 2:30, drive home, eat, bathe and fall into bed. At 8:30 p.m. the phone rings. They need you for a 10:30 p.m. extra engine. You get up at 8:30, dress, eat supper and leave. That's more like 12 hours awake, 4½ hours sleep. This could go on for days. Talk about stress!

What about the men who are in the freight pool? When you are near to being first out you don't dare leave the telephone for fear of losing a call and going without work for three or four days. Trying to figure out when to and when not to answer the telephone builds up the pressure. And when you are first out sometimes you may have to wait seven hours—waiting for the phone to ring—before you are finally called. A whole day you sat home and did nothing because you were first out. You didn't dare go anywhere.

Men who are on the road six or eight or 12 hour often can't use the bathroom when they would like to even though they have toilets on the engines. The majority of the men choose not to use them because of the filth and odor. Therefore, they begin to have problems.

How many men in engine service do you know who talk in a normal tone? How many railroad men do you know who have really great hearing after working around trains for years? This is another stress factor: that one day you might lose part of or most of your hearing.

Be a mother with three small kids and have one—or all three—wake up at two in the morning with fever and vomiting. No one home to help if you need to take a child to the hospital in the middle of the night. Your husband is gone and you are scared and you need him with you during the crisis. But you're on your own.

A lot of people working for the railroad are under stress—and the ones around them are too!

WASHINGTON LEGAL FOUNDATION,
Washington, DC, June 19, 1984.

HON. JOHN C. DANFORTH,
Chairman, Surface Transportation Subcommittee, Senate Commerce Committee, 508 Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR DANFORTH: The Washington Legal Foundation ("WLF" or "Foundation"), submits this statement for the record of the Surface Transportation Subcommittee's hearing of June 6, 1984, on the problem of alcohol and drug abuse in railroad operations. We appreciate the Subcommittee's willingness to allow the presentation of additional statements by keeping the hearing record open for an additional two weeks.

WLF is a non-profit public interest law center with over 200,000 members and supporters nation-wide. WLF represents the interests of its members in a broad va-

riety of legal and administrative proceedings involving the individual rights of citizens and issues of concern to the public at large.

WLF devotes a substantial portion of its resources toward promoting safety and efficiency in the workplace and schoolroom by encouraging policies designed to eliminate illicit drug use by employees and students. The Foundation's "Drug Alert Project" was founded with the intent of supporting efforts to curb illegal drug use and to counter in the courts and administrative agencies the activities proponents of relaxed drug laws. The Foundation also provides legal assistance to private sector employers and municipalities interested in detecting and curbing drug abuse by their employees.

We appreciate the opportunity to submit for the record our views on the issue of drug and alcohol-related safety problems on the nation's railroads.

The main issue before the Subcommittee concerns the measures being taken by the Department of Transportation ("DOT") and the Federal Railroad Administration ("FRA") to deal with this problem. The threshold question is whether DOT should adopt regulations in this area at all.

While WLF firmly opposes excessive and unnecessary federal regulations, and applauds the Administration's efforts to reduce and rationalize such regulations, this is one area where we believe that reasonable but effective federal regulation has become necessary. The mounting evidence of alcohol and drug-related accidents on our railroads is simply too compelling to ignore. Existing measures such as "Rule G" have simply not worked. Railroad travelers have a right to be assured that the operational personnel on whom they must rely for their traveling safety are not impaired by drugs or alcohol. Yet the evidence of catastrophic railroad accidents caused by alcohol and/or drug abuse brought forth by these hearings shows that the necessary margin of safety has been dangerously compromised. Thus, federal minimum safety standards pertaining to drug and alcohol use by railroad operational personnel are justified.

On the whole, WLF supports the measured regulatory response described by Secretary Dole in her June 6 statement to this Subcommittee. We believe that those proposals represent a conscientious effort to balance the need for effective preventive measures against the practical demands of railroad operations and the individual rights of railroad employees.

However, there are several areas where the measures proposed by the Secretary could be improved or should be subjected to further investigation and oversight.

1. Pre-Duty Abstinence from Illegal Drugs.—WLF strongly supports the proposal to prohibit all drug or alcohol use on duty by covered railroad employees. WLF would also be inclined to support a reasonable pre-duty abstinence from alcohol rule, such as the 8 hours proposed by the NTSB, or the 12-hour period used under FAA rules, if such a rule were enforceable and fair to the concerned employees. However, we appreciate the practical considerations (e.g., the prevalence of short-notice calls of duty for "extra board" employees) which might render a flat pre-duty abstinence period for alcohol (a legal substance) unworkable.

WLF believes, however, that a pre-duty abstinence rule as to illegal drugs is not subject to the same considerations. Even a standby railroad employee who does not know exactly when he might be called to duty on short notice should not be consuming illegal drugs such as cocaine, heroin, or marijuana. A pre-duty abstinence rule for illegal drugs hardly creates an unreasonable or arbitrary restraint upon railroad employees. Therefore, we believe that the Department of Transportation should seriously consider the desirability of a strict pre-duty abstinence rule with respect to illegal drugs.

2. Supervisory Observation Role.—The lack of a pre-duty abstinence rule underscores the need for railroad supervisors to assume greater responsibility for enforcing the proposed rule that alcohol or drug-impaired employees cannot be allowed to go on duty. The DOT proposed rule indicates that specific federal rules concerning supervisory responsibility are not workable at all. With all respect for DOT's expertise, we question that contention.

The key to the beneficial new rules is effective enforcement. A rule setting minimum standards for supervisory observation responsibility need not be unduly obtrusive or complex and need not entail burdensome paperwork. A simple rule requiring supervisors to observe train crews for manifest alcohol or drug impairment (e.g., dilated pupils, staggering, slurred speech) upon reporting for duty would not seem to be overly burdensome. To the extent that it is not practicable for supervisors to meet all crews each time they report for duty—and the reasons for this inability are not entirely clear—the rule could be modified to account for justifiable exceptions (e.g., "except where legitimate operational or personnel considerations make it impossible to do so on a given shift"). At the very least, the rule could provide for man-

datory periodic or random supervisor observations, which would have some significant deterrent effect.

In short, WLF believes that establishing a reasonable standard for supervisory observation responsibility as to manifest impairment is critical to effective enforcement of the proposed new rules.

The new rules proposed by DOT represent an important and commendable first step in the effort to eliminate the dangerous consequences of drug and alcohol abuse from our nation's railroads. The policy of the proposed rules is sound and well-balanced, but the key to their success lies in the effective enforcement measures. WLF urges the Subcommittee and DOT to keep that consideration in mind in the continuing effort to prevent drug and alcohol abuse from causing further tragedies on our railroads.

Very truly yours,

DANIEL J. POPEO,
GEORGE C. SMITH.

STATEMENT OF THE AMERICAN TRUCKING ASSOCIATION, INC.

COMMENTS OF THE SAFETY & SECURITY DEPARTMENT BEFORE THE DEPARTMENT OF TRANSPORTATION

American Trucking Associations, Inc. (ATA) strongly supports action by the Federal Railroad Administration to promulgate regulations to effectively control railroad workers who endanger the public, including truck drivers, when on duty while under the influence of alcoholic beverages or controlled substances. There is an urgent need for the Federal government to promulgate regulations which will assure an effective program by the railroads to control the conduct of their workers in order to reduce railroad accidents.

That the present reliance on carrier promulgated and administered rules is inadequate is borne out by the finding of FRA, that, since 1972, there have been in excess of 20 major train accidents in which alcohol or drug use was the probable cause or contributing factor.

At grade crossings, truck drivers, and the motoring public are placed in jeopardy whenever train crew members are on-duty and under the influence of alcohol or controlled substances. Clearly, the ingestion of alcohol or drugs impairs their ability to control train speed or otherwise act to avoid a collision with crossing traffic. Similarly, local residents in neighborhoods adjacent to railroad tracks, as well as highway users are endangered, harmed and inconvenienced by derailments and other train accidents and incidents.

A case in point is the recent derailment of a train carrying hazardous materials in Livingston, Louisiana. The investigation disclosed that, because train crew members had been drinking, the train was being operated by a clerical employee of the railroad who was not authorized to be in the cab of the locomotive. Because the train was carrying hazardous materials, their release resulted in the evacuation of over 2,500 local residents from their homes for two weeks.

Recently, the National Transportation Safety Board (NTSB) release the report of a collision between two trains, one of which was being operated by an unqualified brakeman because the assigned engineer was under the influence of alcohol.

INADEQUACIES OF THE PRESENT FEDERAL APPROACH TO REGULATING RAILROAD SAFETY

Safety regulations promulgated and enforced by FRA are focused primarily on the condition of locomotive, cars, track and signal systems. There is little, if any, attention given to the human factors of railroad accident causation. For instance:

(1) there are no Federal standards governing the medical condition of railroad employees to assure that they do not have physical impairments, which could inevitably lead to unsafe operating conditions and therefore precipitate accidents;

(2) there are no federal standards governing the selection of workers and requiring management to screen job applicants in order to avoid the hiring of persons whose character or past conduct indicates a lack of fitness for the responsibility for safe operation of trains;

(3) there is no Federal requirement that train speed be reduced under adverse environmental conditions such as rain, fog, snow, ice, or potential flooding;

(4) there is no Federal prohibition against railroad employees being on-duty while under the influence of alcoholic beverages or controlled substances, nor is there a Federal prohibition against employees consuming alcoholic beverages or controlled substances while on-duty or within a prescribed period of reporting for duty.

This is a radical departure from Federal safety regulations imposed on the trucking industry; regulations which have been in place since the 1930's. Motor carriers are required to assure that persons they hire as drivers are fully qualified by virtue of skill, knowledge, physical condition, and past performance. Performance requirements mandate that truck drivers can operate their vehicle safely and they do so in accordance with the law and the conditions of road, weather, and traffic.

Studies cited in the subject notice clearly show that there is an urgent need to promulgate Federal regulations governing the use and possession of alcoholic beverages and controlled substances by railroad employees. This action should be the initial step in a broad-based effort to promulgate strong and effective Federal rail safety regulations governing worker qualifications and conduct. Regulations of this nature have been applicable to workers in air, water, and highway transportation and are widely recognized for the enhancement of safety.

Recommendations

ATA recommends that FRA adopt the following as regulations to reduce the potential for railroad employees being under the influence of alcoholic beverages or other controlled substances while on-duty. Such regulations should be made applicable to train service employees and to all other workers who have responsibilities which can affect the safe movement and operation of trains.

(1) *Disqualification.*—A worker found to be on-duty while under the influence of an alcoholic beverage or controlled substance should be disqualified for a period of one year for a first offense, and three years for each successive offense within the three-year period.

Section 391.15(c) of the Federal Motor Carrier Safety Regulations (FMCSR) imposes penalties of this nature on any driver who is convicted of driving under the influence of an alcoholic beverage or controlled substance while on-duty and driving a commercial motor vehicle. The "second offense" penalty is invoked for any conviction which occurs within three years of a previous conviction.

(2) *Mandatory checks of the past history of applicants.*—Require railroad management to check with each previous employer within the previous three years, and also with the motor vehicle licensing agency in each state in which the applicant has held a driver's license during the previous three years.

An applicant who is found to have a record of frequent convictions for operating a motor vehicle under the influence of alcoholic beverages or controlled substances, or has an employment history marred by such use, should not be employed in any capacity affecting the safety of railroad operations.

Section 391.23 of the FMCSR requires that interstate motor carriers make such checks. The trucking industry recognizes that the history of an individual's past performance is one of the most reliable indicators of future performance.

(3) *Medically disqualify alcoholics and drug users.*—This action should be taken as the initial step in promulgating a full panoply of FRA-mandated medical qualifications. Important as the problems of drug and alcohol abuse are, they are but one facet of the total need for FRA to mandate a program for the initial evaluation and periodic reevaluation of employees to insure that they do not develop conditions which may result in sudden incapacitation and the inability to perform safely.

Under the FMCSR, the problems of drug and alcohol abuse are dealt with in two separate provisions: Section 391.41(b)(12) states that a person is medically disqualified as a driver for the use of an amphetamine, narcotic, or other habit-forming drug. An exception is made in the case of a person taking a prescription drug under the direction of a physician who has determined that the ability of the employee to perform safely will not be affected. Section 391.41(b)(13) specifies that a person with a current clinical diagnosis of alcoholism is medically disqualified.

(4) *Prohibit alcohol and drug use on-duty and prior to going on-duty.*—The record, as discussed in the subject notice, clearly shows that carrier rules in this area have not been effective. They must be supported by prohibitions promulgated and enforced by FRA, with railroad management and workers made jointly responsible for compliance.

Section 392.4 of the FMCSR prohibits a person from driving a vehicle while using or possessing an amphetamine, narcotic or habit-forming drug. Management is prohibited from requiring or permitting the person to drive in such a condition. An exception is made for the individual taking any prescription drug under the direction of a physician who has determined that the person's ability to safely control a motor vehicle will not be adversely affected.

Also, Section 392.5 of the FMCSR prohibits driving while under the influence of, or in possession of, any alcoholic beverage. It also prohibits consumption of any alcoholic beverage within 4 hours of going on duty. Management is prohibited from re-

quiring or permitting a person to drive, whose actions indicate being under the influence of an alcoholic beverage.

Conclusion

ATA urges prompt action by FRA in the promulgation of rules similar to those in place for motor carriers to control the identified problems of alcohol and controlled substance abuse among workers. Once this objective has been achieved, there should be further action by the agency to establish Federal controls over all aspects of the qualifications and conduct of railroad employees who have responsibilities for the safety of train operations.

